

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

UNITED STATES OF AMERICA,)
)
 PLAINTIFF,) CRIMINAL CASE NO.
) 1:17-CR-00027-JPJ-PMS-1
 VS.)
)
 JOEL A. SMITHERS,) **EVIDENCE PORTION ONLY**
)
 DEFENDANT.)

REDACTED TRANSCRIPT OF JURY TRIAL - DAY 2
HONORABLE JUDGE JAMES P. JONES PRESIDING
TUESDAY, APRIL 30, 2019

A P P E A R A N C E S

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Proceedings taken by Certified Court Reporter and transcribed
using Computer-Aided Transcription

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1 (Requested proceedings of Evidence Only begins at 10:36
2 a.m.)

3 THE COURT: Are we ready for the jury?

4 MR. WILLIAMS: I think there's one matter that I'd
5 ask to take up prior to the jury being called back in.

6 THE COURT: Yes, sir. If you'd come to the lectern,
7 please.

8 MR. WILLIAMS: Yes, Your Honor.

9 May it please the Court. I think the Government's
10 first witness they intend to call will be a lady named Sylvia
11 Fields. I think she was involved in -- it was -- had some
12 relation in West Virginia. When he was in practice in West
13 Virginia, she was -- instituted a fine against his office as
14 part of the State of West Virginia that I think it involved
15 some HIPAA, alleged HIPAA violations, and also I think it had
16 maybe something to do with overdosing or something.

17 THE COURT: Hold on. I'm not sure I follow. You
18 said, "She was instituted a fine against his office." She was
19 fined? He was fined?

20 MR. WILLIAMS: He was fined.

21 THE COURT: You mean she made some sort of complaint
22 against him?

23 MR. WILLIAMS: No. She worked for the State of West
24 Virginia, I believe, and came in as some kind of an auditor or
25 something along those lines.

1 THE COURT: Oh, I see.

2 MR. WILLIAMS: Based upon her investigation, there
3 were some HIPAA, I think, violations. And then there was also
4 another violation that I believe dealt with maybe prescribing
5 or something along those lines. We believe that this would be
6 certainly irrelevant as to this case. I don't think it has to
7 do with any of the indictments that are here before us today.
8 We also believe it violates character issues.

9 THE COURT: Okay. Well, let me hear from the
10 Government. I think I understand your argument.

11 MR. WILLIAMS: All right. Thank you.

12 MR. RAMSEYER: Your Honor, the evidence would show
13 that on June 15th of 2015, Dr. Smithers opened a clinic in
14 Beckley, West Virginia, called Priority Urgent Care. And on
15 June, I believe its June 23rd of 2015, based on a complaint,
16 the inspection team showed up at the office to see
17 Dr. Smithers and to look at patient files. They asked for
18 patient files. He said they need to come back with a
19 subpoena. He said he wasn't operating a pain clinic.

20 They came back the next day and the office had been
21 cleared out and the dumpster in the back was full of urine
22 samples that had not been tested. These patient -- in that
23 brief time period that he was at Priority Urgent Care, he
24 produced some -- there are some patient charts that are in the
25 patient charts we plan to introduce into evidence, because

1 it's the same patient, some of them. So we believe it tells
2 the whole story. These are patients that he started at
3 Priority Urgent Care, took 'em with him when he came to
4 Martinsville. And it also goes to his intent and his
5 knowledge in that he's adamant that he's not operating a pain
6 clinic, when he clearly is.

7 But -- and it also explains why he's at Priority
8 Urgent Care in June and then two months later he's in
9 Martinsville. He's not in West Virginia anymore.

10 THE COURT: Well, I'm not sure what the relevancy of
11 his moving his practice is. I mean --

12 MR. RAMSEYER: Well, the -- as I said --

13 THE COURT: What's the Government's argument in that
14 regard?

15 MR. RAMSEYER: Well, the patients, some of the
16 patients were with him at Priority Urgent Care. The notes or
17 charts from that are actually in the patient files that are
18 being introduced into evidence. I believe it explains the
19 story of that he was there and then he's here and that he left
20 hurriedly.

21 THE COURT: Well, okay. So, but, I guess, seems to
22 me that perhaps the most relevant thing is you say that this
23 witness will testify that he told her that he was not
24 operating a pain clinic.

25 MR. RAMSEYER: Yes.

1 THE COURT: And the Government's evidence would be
2 that he was, in fact.

3 MR. RAMSEYER: Yes.

4 THE COURT: All right. To show his consciousness of
5 guilt, in essence.

6 MR. RAMSEYER: Yes, Your Honor.

7 THE COURT: All right.

8 Yes, sir, Mr. Williams.

9 MR. WILLIAMS: Your Honor, I think that clearly
10 shows --

11 THE COURT: If you'll come to the lectern, please.

12 MR. WILLIAMS: I'm sorry.

13 THE COURT: So what about that?

14 MR. WILLIAMS: I think that clearly shows it's going
15 toward his character. He's trying to draw a conclusion that
16 he's a bad person that's moving from place to place. I also
17 think that certainly --

18 THE COURT: Well, moving from place to place, I
19 guess the evidence would be he was sort of -- the Government's
20 inference would be that he's -- he's moving in order to escape
21 what he's doing wrong and, more importantly, his statement
22 that he was not operating a pain clinic when the evidence was
23 that he was.

24 MR. WILLIAMS: Right. And, Judge, it's my
25 understanding that that matter is still within the circuit

1 court of Kanawha County, West Virginia. And there's not been
2 a determination made --

3 THE COURT: Well, I don't know -- I agree that any
4 charge, or fine, or anything like that, I don't know the
5 relevancy of that.

6 And, Mr. Ramseyer, is that anything that's relevant?
7 That he was fined for some HIPAA violation?

8 MR. RAMSEYER: He was fined for a HIPAA violation,
9 for operating a pain clinic without a license, and improperly
10 disposing of --

11 THE COURT: I assume when you said HIPAA, you meant
12 disclosure of patient confidential information.

13 MR. RAMSEYER: Right. There were three different
14 things. There was a HIPAA violation, operating a chronic pain
15 clinic without a license, and improperly disposing of bio
16 waste, that would be urine.

17 THE COURT: All right. Well, isn't that relevant?
18 But it's not been disposed of, you're saying?

19 MR. WILLIAMS: It has not, that's correct.

20 THE COURT: Well, you can bring that up in
21 cross-examination. I'll overrule the objection to calling
22 this witness.

23 Are you ready, Mr. Ramseyer?

24 MR. RAMSEYER: Yes, Your Honor.

25 THE COURT: All right. We'll have the jury in.

1 (Proceedings held in the presence of the jury.)

2 THE COURT: All right. Ladies and gentlemen, we're
3 ready to go again.

4 And the Government may call its first witness.

5 MR. RAMSEYER: Thank you, Your Honor.

6 We call Sylvia Fields.

7 THE CLERK: Please raise your right hand.

8 Do you solemnly swear that the testimony you're
9 about to give in this case shall be the truth, the whole
10 truth, and nothing but the truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: You may be seated.

13 **SYLVIA WINONA FIELDS,**

14 Called as a witness herein by the Government, having been
15 first duly sworn, was examined and testified as follows:

16 **DIRECT EXAMINATION**

17 BY MR. RAMSEYER:

18 Q. Please state your full name.

19 A. Sylvia Winona Fields.

20 Q. Could you spell your middle name.

21 A. W-i-n-o-n-a.

22 Q. Your first name, is that with a "Y"?

23 A. S-y-l-v-i-a.

24 Q. Ms. Fields, are you currently retired?

25 A. Yes, I am.

1 Q. Congratulations.

2 A. Thank you.

3 Q. Prior to that, where did you work?

4 A. I worked for the Office of Health Facilities for
5 Licensure and Certification, which is OHFLC.

6 Q. Was that in the state of West Virginia?

7 A. Yes.

8 Q. Does that have an acronym?

9 A. OHFLC.

10 Q. And what was your position there when you retired?

11 A. I was the Program Manager I for the Chronic Pain
12 Management Program.

13 Q. And in that position -- and what were some of the things
14 you did in that role?

15 A. We licensed clinics that applied for chronic pain
16 licensure. We surveyed those clinics against the chronic pain
17 management rule. We also did complaints. When people would
18 call in and tell us they thought the center was operating a
19 chronic pain management center but not licensed, we would go
20 and we would do a complaint investigation.

21 Q. Okay. And in that role did you come in contact with the
22 defendant, Dr. Smithers, Joel Smithers, in June of 2015?

23 A. Yes, we did.

24 Q. Okay. And can you explain -- tell the jury what happened
25 and how you met up with --

1 MR. WILLIAMS: Your Honor, if I may, I would object
2 and just ask for a continuing objection based on character and
3 on relevance as previously --

4 THE COURT: I'll overrule the objection.

5 MR. RAMSEYER: You can go ahead and answer.

6 THE WITNESS: Okay. We received a complaint from a
7 physician in Beckley that --

8 THE COURT: Why don't you not go into what the
9 nature of the complaint was. Just what did you do?

10 THE WITNESS: We went to visit the clinic. And when
11 we arrived, we --

12 THE COURT: When you say "we," who do you mean?

13 THE WITNESS: Oh, we had a team that went. I think
14 two other surveyors and I went.

15 BY MR. RAMSEYER:

16 Q. But the place you went to, what was the name?

17 A. It was Priority Urgent Care.

18 Q. Priority Urgent Care?

19 A. Uh-huh.

20 Q. Was it at 2401 South K --

21 A. South Kanawha.

22 Q. Kanawha Street. And that's K-a-n-a-w-h-a?

23 A. Yes.

24 Q. In Beckley?

25 A. Yes.

1 Q. So you went there.

2 A. Yes, we did.

3 Q. What happened when you went there?

4 A. We went in and introduced ourselves and spoke with -- we
5 told them we were there on a complaint. We met with
6 Dr. Smithers. And he said that he had just been on the phone
7 with his lawyer. He did not want to be a chronic pain center.
8 He just wanted to be an urgent care. And that if we wanted to
9 look at patient records, we would have to get a subpoena.

10 Q. Okay. And so -- and what day was that?

11 A. That was on the 23rd.

12 Q. 23rd of June --

13 A. Of June, right.

14 Q. -- 2015?

15 THE COURT: Is that right? '15?

16 THE WITNESS: I'm sorry.

17 THE COURT: 2015?

18 THE WITNESS: 2015. Correct.

19 THE COURT: If you'll listen to the question, --

20 THE WITNESS: Mm-hmm.

21 THE COURT: -- then answer it fully, please.

22 BY MR. RAMSEYER:

23 Q. So, again, so you go in there. Is that pretty much the
24 conversation with Dr. Smithers?

25 A. Yes.

1 Q. That you need to get a subpoena?

2 A. We did get an inspection warrant. We left shortly
3 thereafter and we returned to Charleston and obtained an
4 inspection warrant.

5 Q. All right. About how far is it from Beckley to
6 Charleston?

7 A. About 50 miles or so.

8 Q. Okay. So when did you go back to the office?

9 A. We went back the next day, right around about 1:15 I
10 think it was.

11 Q. So went back to the same office where you had seen
12 Dr. Smithers the day before?

13 A. Yes, we did.

14 Q. And was it his clinic?

15 A. As far as we knew, yes, it was his clinic.

16 Q. And what happened when you went back the next day?

17 A. The office was locked and we had to get the manager to
18 let us into the office. And the office was cleaned out,
19 basically.

20 Q. All right. And so one of the allegations was that he was
21 operating a pain clinic; is that right?

22 A. Yes.

23 Q. Did you investigate that?

24 A. Yes, we did. We eventually got the patient records from
25 a court order. And we determined from the patient records

1 that he was above a 50 percent, which is what the rule
2 required.

3 Q. More than 50 percent of his patients were what?

4 A. Were being treated for narcotics and pain management.

5 Q. All right. And when you came back that next day on
6 June 24th of 2015, did you find anything else there? You said
7 it had been cleared out.

8 A. We found several miscellaneous items. I would have to
9 look at the list that we submitted to the court. But one of
10 the things we found was a torn license, which had a picture of
11 a gentleman, his name. We found some miscellaneous documents
12 that belonged to Priority Urgent Care. We found lab slips.
13 We found --

14 I'm getting very dry. Can I have some water,
15 please?

16 THE COURT: Yes, ma'am.

17 THE WITNESS: We found -- we found a little slip of
18 paper that appeared to be a script, a telephone script, for
19 people to -- for people at the office to talk with patients.

20 BY MR. RAMSEYER:

21 Q. Was it a big office?

22 A. No, it was very small.

23 Q. Okay. Did you find anything outside that was related to
24 the clinic?

25 A. Yes. We went outside because the maintenance gentleman

1 had told us that they had thrown away a lot of things. And
2 when we found that they had not emptied the dumpster, we went
3 to the dumpster to look. And we did find lots of bags of
4 paper that we couldn't tell what it was. It was shredded.
5 And then we found a large box of urine samples which had
6 patient-identifying information.

7 Q. Okay. Had they been tested yet?

8 A. No. No. They were packaged ready to be sent to be
9 tested.

10 Q. They were in the dumpster?

11 A. They were in the dumpster.

12 Q. Okay. And so based on that, did you do anything based on
13 the information you had?

14 A. We secured that -- those things and we took them back to
15 Charleston. We made a list of everything that we had picked
16 up. We returned to the court the list that we had obtained
17 and all the things we obtained, and we turned the urine
18 samples over to the Board of Osteopathy.

19 MR. RAMSEYER: All right. May I have a moment,
20 Your Honor?

21 Thank you, ma'am. Please answer defense counsel's
22 questions.

23 THE COURT: All right. Cross-examination?

24 ///

25 ///

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Ms. Fields, you had stated that you went -- when you went to that facility you weren't sure who the owner was; is that correct? You said you assumed that he was. Did you check to see if Dr. Smithers was the owner of that urgent care?

A. No. We just went on the complaint that there was a pain clinic operating.

Q. Okay. And so as far as -- you just assumed that he was the owner by him being there; is that correct?

A. He was the only physician that was at the clinic.

Q. Okay. Is it your understanding that it was a one-time urgent care visit, is that -- had you had a chance to look at anything regarding that? Or what was being treated there or anything?

A. It was -- on the door it said "Priority Urgent Care."

Q. Okay.

A. When we received the patient charts, the patient charts, the patients were all treated for pain management problems with narcotic medication.

Q. Okay.

MR. WILLIAMS: May I have just a moment, please?

BY MR. WILLIAMS:

Q. Ms. Fields, at that time were all the pain clinics and everything being shut down, or most the pain clinics in West

1 Virginia being shut down at that time?

2 A. Not to my knowledge, no. There were some that were shut
3 down.

4 Q. Some that were shut down?

5 A. Yes.

6 Q. Was there one right close to that urgent care facility
7 that had been shut down? Maybe a Hope Clinic or something?

8 A. Yes.

9 MR. WILLIAMS: Thank you. No further questions.

10 THE COURT: Anything further?

11 MR. RAMSEYER: Just briefly.

12 **REDIRECT EXAMINATION**

13 BY MR. RAMSEYER:

14 Q. You indicated that you eventually got patient files and
15 reviewed them?

16 A. Yes.

17 Q. Were they Dr. Smithers's files?

18 A. Yes.

19 MR. RAMSEYER: Thank you.

20 THE COURT: Anything further?

21 All right. Thank you, ma'am. You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: And may this witness be excused?

24 MR. WILLIAMS: Yes, Your Honor.

25 MR. RAMSEYER: Yes, Your Honor.

1 THE COURT: Ma'am, you may leave. Thank you.

2 MR. LEE: The Government calls Tracy Whitlow.

3 THE CLERK: Please raise your right hand.

4 Do you solemnly swear that the testimony you're
5 about to give in this case shall be the truth, the whole
6 truth, and nothing but the truth, so help you God?

7 THE WITNESS: I swear.

8 THE CLERK: You may be seated.

9 **TRACY WHITLOW,**

10 Called as a witness herein by the Government, having been
11 first duly sworn, was examined and testified as follows:

12 **DIRECT EXAMINATION**

13 BY MR. LEE:

14 Q. Good morning.

15 A. Good morning.

16 Q. I can already tell your voice is a little soft. So I'm
17 going to ask you to speak up and speak directly into the
18 microphone. Okay?

19 THE COURT: If you could move up and pull the
20 microphone toward you and just speak up.

21 THE WITNESS: Is that good?

22 MR. LEE: Thank you.

23 BY MR. LEE:

24 Q. Would you please introduce yourself to the members of the
25 jury.

1 A. Tracy Whitlow.

2 Q. Ms. Whitlow, where are you currently employed?

3 A. Dr. Favero's office in Martinsville.

4 Q. Are you from the Martinsville area?

5 A. I'm from Franklin County, which is adjacent to
6 Martinsville. But I've worked in Martinsville for 25 years.

7 Q. And in what capacity have you worked?

8 A. I was a nurse for Dr. Selman for over 20 years. And then
9 when he retired, I moved to Dr. Favero's office.

10 Q. Tell the members of the jury what type of doctor the
11 current doctor you work for is?

12 A. He is a family doctor that does allergy.

13 Q. And Dr. -- is it Selma?

14 A. Selman. S-e-l-m-a-n.

15 Q. You worked for him for over 20 years?

16 A. Mm-hmm. And he was an ENT.

17 Q. Where was his office located?

18 A. On Commonwealth.

19 Q. Just for the jury, what's an "ENT"?

20 A. Ear, nose and throat doctor.

21 Q. What were your responsibilities as a nurse with his
22 office?

23 A. Well, I did the allergy, which means I test the allergy
24 patients. I mix up their serum and I give the weekly
25 injections.

1 Q. Where in Martinsville was Dr. Selman's office located?

2 A. 445 Commonwealth Boulevard.

3 Q. And that location -- had he been in that location for an
4 extended period of time?

5 A. We had been at the building we were in for 20 years. And
6 then he owned that building and sold it two years prior to
7 retiring and moved into the building next door, which you
8 could see. You could -- it was just a little grass between
9 it.

10 Q. And when did Dr. Selman retire?

11 A. The end of 2015.

12 Q. Do you remember another medical office opening up in the
13 summer of 2015 --

14 A. Yes.

15 Q. -- near to Dr. Selman's?

16 A. Mm-hmm. Dr. Smithers moved in up above when Dr. Mahoney
17 moved out.

18 Q. Okay. And, if you could, just explain to the members of
19 the jury, just the ge -- the setup, the physical setup of
20 those two offices.

21 A. Basically, on the bottom floor there were two doctors,
22 Dr. Selman and Dr. Eller. And on the upper floor was another
23 office. And there was just an upper parking lot and a lower
24 parking lot and just the steps between it. It wasn't a very
25 big building.

1 Q. You said Dr. Smithers had opened his office in the summer
2 of 2015.

3 A. Yes.

4 Q. Do you remember what month that would have been?

5 A. August, I believe.

6 Q. Okay. And when Dr. Smithers opened up his office, did
7 you start to notice things about his patients that were
8 somewhat troubling to you?

9 A. Well, I typically come in two hours earlier than
10 everybody else so that I can make allergy serum. And there
11 were a lot of cars in the parking lot. That had never
12 happened before. We had a lot of people coming in who were
13 very nervous and weren't well kept who were demanding to use
14 the bathroom and use the phone. They would say, "Well you
15 have to let me because I'm Dr. Smithers's patient." And we
16 would just -- that was behind a locked door where the bathroom
17 was, so I didn't feel comfortable letting them in.

18 Q. Did you notice if people were sleeping in the parking
19 lots?

20 A. Yeah, they were sleeping in the parking lot.

21 Q. And how would you know that?

22 A. Because I would get there at 6:00 and there would be dew
23 on the windows, or they'd be changing clothes outside, or
24 using the bathroom. There were a couple occasions I had to
25 call Dr. Selman when I left work, because I was the last one,

1 and he would come back and walk me to my car.

2 Q. So you didn't feel comfortable even walking to your car?

3 A. No. And I had done that for 20 years.

4 Q. What, if anything, did you notice about the license
5 plates of patients for Dr. Smithers?

6 A. They were different states: West Virginia, Ohio,
7 Kentucky, that I recall. And I had never seen that before.

8 Q. And you said Dr. Selman's office closed the end of 2015?

9 A. Mm-hmm. December the 31st.

10 Q. And the things you've been talking about; people sleeping
11 in the parking lot, out-of-state license plates, people
12 using -- I'm going to assume going to bathroom in the parking
13 lot, did that continue the entire time when Dr. Selman's
14 office was open while Dr. Smithers's office was open?

15 A. Yes.

16 MR. LEE: If I may have one moment, Your Honor.

17 Thank you, Ms. Whitlow. Please answer any questions
18 defense counsel may have.

19 THE COURT: Cross-examination?

20 **CROSS-EXAMINATION**

21 BY MR. WILLIAMS:

22 Q. Ms. Whitlow, did you ever make Dr. Smithers aware of
23 these concerns or anything? Did you ever --

24 A. No.

25 Q. You did not. Okay.

1 Thank you. That's all the questions I have, Judge.

2 THE COURT: All right. Thank you, ma'am.

3 You may step down.

4 THE WITNESS: Thank you.

5 THE COURT: I take it this witness may be excused?

6 MR. LEE: Yes, Your Honor.

7 THE COURT: You may be excused, ma'am. You may
8 leave. Thank you.

9 MR. LEE: Your Honor, the Government calls Tim
10 Robertson.

11 THE CLERK: Please raise your right hand.

12 Do you solemnly swear that the testimony you're
13 about to give in this case shall be the truth, the whole
14 truth, and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: You may be seated.

17 **TIM ROBERTSON,**

18 Called as a witness herein by the Government, having been
19 first duly sworn, was examined and testified as follows:

20 **DIRECT EXAMINATION**

21 BY MR. LEE:

22 Q. Good morning.

23 A. Good morning.

24 Q. Sir, would you please introduce yourself to the members
25 of the jury.

1 A. My name is Timothy Robertson. I'm a pharmacist. At the
2 time I was working for Family Pharmacy. I was a floater down
3 in Bassett, Virginia.

4 Q. All right. When you say "at the time", what are you
5 referencing?

6 A. I'm assuming a couple years ago.

7 Q. Just so the jury's aware, you've been interviewed
8 previously about prescriptions that were provided to you from
9 a Dr. Smithers; is that correct?

10 A. Yes.

11 Q. And that's why you've been summonsed to be here?

12 A. Yes.

13 Q. So that's what you're referring to as far as where you
14 were working at a previous time?

15 A. Yeah. Yes. I'm sorry.

16 Q. That's okay. We'll get there, I just want to ask you
17 some questions about your background if that's all right.

18 A. Okay.

19 Q. You said you're a pharmacist. How long have you been a
20 pharmacist?

21 A. Almost 30 years.

22 Q. And in the Martinsville area your entire time?

23 A. No. Probably the majority of it in the
24 Martinsville-Henry area, but some in Salem, Virginia.

25 Q. Okay.

1 A. But probably more than half in the
2 Henry-Bassett-Martinsville area.

3 Q. Okay. And specifically during 2015, 2016, where were you
4 working?

5 A. I was a floater for Family Pharmacy, but I would spend
6 two to three days a week at the Bassett store.

7 THE COURT: What do you mean by a floater? What
8 does that mean?

9 THE WITNESS: He had five locations. So I was --

10 THE COURT: You mean you moved from different stores
11 to different stores? Is that what you mean?

12 THE WITNESS: Yeah. I worked at different stores.
13 Like, one day I'd be in Braswell, one day I'd be in Rocky
14 Mount. But two to three days a week I was in the Bassett
15 store.

16 BY MR. LEE:

17 Q. Are you saying Bassett or Bassin?

18 A. Bassett. B-a-s-s-e-t-t.

19 Q. Okay. I'm not familiar with where that is located, if
20 you could tell the jury roughly where that is.

21 A. It is about -- well, it's just north of Martinsville.
22 It's about 15, 20 miles north of North Carolina on 220.

23 Q. I assume you had to drive from the Martinsville area to
24 get here for your testimony today?

25 A. I live in Rocky Mount, which is about 25 miles north of

1 that.

2 Q. Okay. How long did it take to you get here?

3 A. Two and a half hours.

4 Q. All right. So in 2015/2016, you were working as a
5 floater for that Family Pharmacy?

6 A. Yeah.

7 Q. At some point in time did you become aware of
8 prescriptions being written by Dr. Joel Smithers?

9 A. Yes.

10 Q. How did you become aware of those?

11 A. I would see prescriptions coming in for it and most of
12 them were written for controlleds.

13 Q. What do you mean by "controlleds"?

14 A. Mostly C-IIs.

15 THE COURT: You mean controlled substances?

16 THE WITNESS: Yeah. Yeah, I'm sorry. Yes,
17 controlled substances.

18 THE COURT: We don't all understand the lingo, so
19 you need to explain.

20 THE WITNESS: Okay. I'm sorry.

21 BY MR. LEE:

22 Q. When you say -- so "controlleds" means controlled
23 substances; correct?

24 A. Yeah. More specifically, like Schedule IIs; morphine
25 sulfate, Opana, oxycodone, OxyContin.

1 Q. And why are those prescriptions, why do those stand out
2 to you?

3 A. Well, generally they always sort of stand out from the
4 rest of them anyway.

5 Q. Okay. Let me stop you right there. Why, in and of
6 themselves, do Schedule II controlled substances such as the
7 ones you've described, why do those stand out to you as a
8 pharmacist?

9 A. Well, you have to keep a more exact count with that.
10 There's paperwork involved with dispensing them, so you spend
11 more time dispensing a Schedule II prescription than an
12 ordinary prescription to begin with.

13 Q. All right.

14 A. So, but, yeah, with the scrutiny with the DEA now, yeah,
15 you tend to notice them a little bit more than the regular
16 prescriptions.

17 Q. Are those drugs also very subject to abuse and diversion?

18 A. Yeah, highly abusive and -- yeah.

19 Q. Okay. So you notice these Schedule II controlled
20 substances being prescribed by Dr. Smithers come into your
21 pharmacy. What did you do when you started to notice these
22 coming in?

23 A. Well, we -- actually, I was at another store when he
24 first moved to the area. So when I got there, one of the
25 pharmacists alerted me, like, yeah, this doctor is writing for

1 a lot of controlled. You know, a little bit sketchy.

2 MR. WILLIAMS: I'm going to object to hearsay what
3 he was told.

4 THE COURT: Yes, sir. I'll sustain the objection.

5 MR. WILLIAMS: Thank you.

6 THE COURT: Please disregard what somebody else told
7 him, ladies and gentlemen.

8 Just say what you did and not what someone else told
9 you. Okay?

10 Go ahead.

11 BY MR. LEE:

12 Q. So you personally, at some point did you start seeing
13 these prescriptions yourself?

14 A. Yes, I did.

15 Q. All right. Was -- specifically as to those prescriptions
16 or the people providing them to you, were there some concerns
17 or red flags that you had about them?

18 A. Yes. Most of them seemed to be not from the area. They
19 would be from Tennessee, West Virginia. They would be, you
20 know, several hours away. That was a big red flag.

21 Q. And what did you personally do as far as filling or not
22 filling those prescriptions?

23 A. I didn't fill any. I refused to fill them.

24 Q. I'm sorry, could you speak up?

25 A. I refused to fill 'em.

1 Q. Okay. And did you ever communicate that to the people
2 bringing the prescriptions in to you?

3 A. Yes.

4 Q. And what was their reaction? And I don't want you to say
5 what they said, just what they did.

6 A. I mean, I think they were disappointed. But there's not
7 much they can say. I guess they went to -- tried a different
8 pharmacy.

9 Q. All right. Do you have any conversations with
10 Dr. Smithers about this?

11 A. No, I didn't.

12 MR. LEE: Thank you, sir. Please answer any
13 questions defense counsel may have.

14 THE COURT: All right. Cross-examination?

15 **CROSS-EXAMINATION**

16 BY MR. WILLIAMS:

17 Q. Mr. Robertson, when you decide to not fill a
18 prescription, why do you -- would that be because you have
19 concerns over the legitimate medical need; is that correct?

20 A. Yes. There's general -- there's usually red flags. And
21 the fact that they're coming from a long distance to see a
22 doctor is --

23 Q. All right. That would be a personal concern; correct?

24 A. Yeah.

25 Q. And, so, that's kind of subjective.

1 And if another pharmacist filled that prescription,
2 would it be likely to assume that they would find that there
3 would be a legitimate medical need?

4 MR. LEE: Objection, Your Honor. Calls for
5 speculation.

6 THE COURT: I agree. I'll sustain the objection.

7 MR. WILLIAMS: No further questions, Your Honor.

8 THE COURT: All right. Thank you, sir. You may
9 step down.

10 MR. LEE: May this witness be excused, Judge?

11 THE COURT: Yes. And you may be excused, sir. You
12 may leave.

13 You may call your next witness.

14 MR. RAMSEYER: The Government calls Michelle Smith.

15 THE CLERK: Please raise your right hand.

16 Do you solemnly swear that the testimony you're
17 about to give in this case shall be the truth, the whole
18 truth, and nothing but the truth, so help you God?

19 THE WITNESS: Yes.

20 THE CLERK: You may be seated.

21 **MICHELLE SMITH,**
22 Called as a witness herein by the Government, having been
23 first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. RAMSEYER:

Q. Please state your name.

A. Michelle Smith.

Q. I need you to speak up, please.

A. Michelle Smith.

Q. All right. Michelle, where do you live? Just the city and state, I'm not asking for the address.

A. Pinsonfork, Kentucky.

Q. Pinson --

A. Yes.

Q. -- fork, Kentucky?

A. Yes.

Q. All right. And how long have you lived there approximately?

A. Fifteen years.

Q. Okay. How old are you?

A. Thirty-eight.

Q. And what do you do in Pinsonfork?

A. I have three children. I just --

Q. Are you employed?

A. Not right -- not currently, no.

Q. Okay. Did you used to be employed?

A. Yes.

Q. Where did you used to work?

1 A. ARH Hospital.

2 Q. Is that Appalachian Regional Healthcare?

3 A. Yes.

4 Q. And which hospital did you work at?

5 A. Tug Valley.

6 Q. Is that Tug Valley, West Virginia?

7 A. No. It's in South Williamson, Kentucky. It's in

8 Kentucky.

9 Q. Okay. So just -- where you live is right on the

10 Kentucky/West Virginia line; right?

11 A. Yes.

12 Q. And what did you do at ARH?

13 A. I worked in the kitchen.

14 Q. And approximately when did you work -- the years you

15 worked there?

16 A. 2015-2017.

17 Q. All right.

18 A. I think.

19 Q. Now, have you ever seen the defendant before?

20 A. Yes.

21 Q. Okay. That's Joel Smithers; is that correct?

22 A. Yes.

23 Q. Okay. When did you see him?

24 A. I was his patient.

25 Q. Okay. Was that back in 2015?

1 A. I'm nervous. But I think so, yeah.

2 Q. Let me show you something.

3 A. Or '16.

4 MR. RAMSEYER: Judge, may I approach the witness?

5 THE COURT: You may.

6 BY MR. RAMSEYER:

7 Q. Ma'am, I'm showing you -- it's page number MS-34. It's a
8 page from a patient file. Is that you, Michelle Smith?

9 A. Yes.

10 Q. Is that your handwriting?

11 A. Yes.

12 Q. Okay. It's got a date there. Do you see it?

13 A. Mm-hmm.

14 Q. What's the date?

15 A. 11-30-2015.

16 Q. Okay. So having seen that, does that -- do you believe
17 that is when you first went to Dr. Smithers?

18 A. Yes.

19 Q. Sometime around 2015?

20 A. Yes.

21 Q. All right. Why did you go to him?

22 A. Honestly?

23 Q. Yes honestly. It's required.

24 A. Okay. My boyfriend was addicted to pills, and he was a
25 patient.

1 Q. What was your husband's -- excuse me, your boyfriend's
2 name?

3 A. Bryan Harlow.

4 Q. Is that B-r-y-a-n?

5 A. Yes.

6 Q. H-a-r-l-o-w?

7 A. Yes.

8 Q. So your boyfriend was addicted to pain medicine.

9 A. Yes.

10 Q. So having -- so you saw the effect that had on him;
11 correct?

12 A. Yes.

13 Q. So why did you go to Dr. Smithers to get pain medicine?

14 A. Because he didn't get to keep all his prescriptions,
15 so -- and he was buying 'em. So I just went so he could
16 have -- hopefully not have to spend money.

17 Q. Okay. Well, explain that, what you mean by
18 "he didn't get to keep all his prescriptions." What do you
19 mean?

20 A. Well, he had worked it out with this guy that he would go
21 and the guy would pay for everything, and they would split the
22 prescription.

23 Q. Split the pills?

24 A. Yeah.

25 Q. Who was the guy?

1 A. Darryl Williams.

2 Q. Okay. So when you went to Dr. Smithers -- had you gone
3 to his office before with Bryan --

4 A. No.

5 Q. -- but not as a patient?

6 A. No.

7 Q. Okay. So you went and what happened?

8 A. I seen him and he gave me a prescription.

9 Q. He gave you a prescription for pain pills?

10 A. Yeah. Yeah.

11 Q. Okay. And what did you do with them?

12 A. I think -- those weren't -- they were something different
13 that we had never heard of. Or I -- I don't really know. I
14 gave them to Darryl. I don't know.

15 Q. Okay. You gave them to Darryl, then what happened with
16 them?

17 A. I don't know.

18 Q. Did you get half of them?

19 A. Not those, no. I mean, they were, I guess, worthless. I
20 don't know. My boyfriend didn't want them, so.

21 Q. But you got -- let me show you the prescriptions you got
22 that first time.

23 MR. RAMSEYER: May I approach the witness,
24 Your Honor?

25 THE COURT: You may.

1 BY MR. RAMSEYER:

2 Q. I'm going to show you page MS-25. It's a prescription
3 for diclofenac sodium; do you see that?

4 A. Mm-hmm.

5 Q. That's to you, Michelle Smith; correct?

6 A. Yes.

7 Q. To ranitidine, r-a-n-i-t-i-d-i-n-e. And that's -- both
8 of these are dated November 30th, 2015; correct?

9 A. Yes.

10 Q. Next time for Zanaflex, dated November 30, 2015. That's
11 page MS-27; correct?

12 A. Yes.

13 Q. MS-28, for November 30th of 2015, for Neurontin; correct?

14 A. Yes.

15 Q. MS-29, November 30th, 2016, for nortriptyline. Again, to
16 you; correct?

17 A. Yes.

18 Q. MS-30, November 30th, 2015, morphine sulfate, 60 tablets;
19 correct?

20 A. Yes.

21 Q. And also November 30th, 2015, oxycodone, 30 tablets, at
22 MS-31; correct?

23 A. Yes.

24 Q. So were those some of those pills you wanted and some of
25 them you didn't?

1 A. Okay, yeah. I had forgotten about the oxycodone. But we
2 did have half of those, split them.

3 Q. Okay. What about those other ones, the ones that weren't
4 controlleds, what happened with those? Did you care about
5 them? Did you want them?

6 A. I don't even think he filled them. I don't know.

7 Q. Okay. What about the morphine?

8 A. No.

9 Q. He didn't fill them?

10 A. I don't know. It was just the oxycodone ones.

11 Q. That's what he wanted?

12 A. Yeah.

13 Q. Why did you want the oxycodone?

14 A. Because my husband -- boyfriend was buying them and it
15 was cheaper, you know, not to have to buy 'em.

16 Q. Okay. How long a drive was it for you and Bryan to get
17 to Martinsville?

18 A. I can't remember. Maybe three hours. Maybe longer. I
19 really -- I don't remember.

20 Q. Did you ever go?

21 A. Yeah.

22 Q. Okay. It's a lot more than three hours, isn't it?

23 A. Maybe five. It's been a long time ago, I just don't
24 remember.

25 Q. Okay. You understand you have to tell the jury the

1 truth; right?

2 A. Yes.

3 Q. Okay. Do you want to tell them the truth about why you
4 really got the pills?

5 A. That's why.

6 Q. You said it was because your husband was buying them on
7 the street --

8 A. Yeah, he was buying them on the street.

9 Q. -- and he was a drug addict. And what about you?

10 A. At that time, no.

11 Q. Ma'am, do you remember testifying to the grand jury?

12 A. Yes.

13 Q. And that you were required to tell the truth?

14 A. Yes.

15 Q. And do you remember you tried the same thing, saying that
16 you didn't take 'em?

17 A. Yes.

18 Q. You eventually admitted that you yourself snorted the
19 pills.

20 A. I did eventually take them. But when I first went, I did
21 not take pills.

22 Q. So when you first started going, you weren't snorting
23 'em?

24 A. No.

25 Q. But when you -- as you went, you got more pills, you

1 started snorting the pills yourself?

2 A. Yes.

3 MR. WILLIAMS: Your Honor, I'm going to object to
4 the leading question.

5 THE COURT: Overruled.

6 BY MR. RAMSEYER:

7 Q. And when you were snorting them, why were you snorting
8 them?

9 A. To get high, I mean.

10 Q. Okay.

11 A. Energy.

12 Q. And were there other people that Darryl Williams was
13 setting up to go down and see Dr. Smithers?

14 A. Yes.

15 Q. Who were they?

16 A. I only know my brother-in-law and Bryan, I mean.

17 Q. Who is your brother-in-law?

18 A. Greg Harlow.

19 Q. Those are the only ones you know about?

20 A. Basically, yes.

21 Q. And when you went to see Dr. Smithers to get pain pills,
22 was there anything wrong with you?

23 A. No.

24 Q. Okay. Did you just walk in and say, hey, doc, there's
25 nothing wrong with me, I just want a bunch of pain pills?

1 A. No.

2 Q. Okay. Why didn't you say that?

3 A. I'd been coached. I knew he had to have a reason to give
4 'em to me.

5 Q. Okay. So what did you say?

6 A. I really can't remember. I had back pain.

7 Q. Did you tell him you had been in a car wreck?

8 A. Maybe, yeah.

9 Q. All right. So you went there -- how many times did you
10 go there, do you remember?

11 A. Let's see, maybe three or four.

12 Q. Okay. And when you went there, did you see the doctor?
13 Did you ever see Dr. Smithers?

14 A. When I went? Yes.

15 Q. Yes. Were there times the prescriptions were in your
16 name you didn't see him?

17 A. Yes.

18 Q. Okay. What happened in those situations?

19 A. He mailed them or somehow Darryl got 'em. I don't know.

20 Q. Okay. So Darryl got 'em mailed in your name?

21 A. Yes.

22 Q. Did you fill them?

23 A. No.

24 Q. So how did they get filled, do you know?

25 A. I have no idea.

1 Q. Are you talking about the ones that were mailed?

2 A. Yes.

3 Q. How did you know it happened?

4 A. He would call Bryan.

5 Q. And give him half the pills or what?

6 A. Yeah.

7 Q. Now, could you afford to pay -- it's \$450 when you first
8 went, were you able to pay that?

9 A. Did I pay it?

10 Q. Yes.

11 A. No.

12 Q. Who paid for it?

13 A. Darryl would give us money to pay him.

14 Q. Okay. And then when you were repeat visits for \$300, how
15 would you pay that?

16 A. The same.

17 Q. Okay. Now when you testified before the grand jury that
18 you said you went to Dr. Smithers's office a couple times, and
19 then the next three times Darryl just called you and told you
20 the prescriptions were filled and you'd get your half.

21 A. I think the first time I went, and then the next couple
22 of times it started to be bad weather, so Darryl would just
23 call.

24 Q. Okay. Now, in the area you live, is there a problem with
25 oxycodone, oxymorphone? Do you have people using it on the

1 street?

2 A. Yes.

3 Q. What does it sell for on the street? What's the
4 oxycodone sell for, back in this time period, '15-'16? You
5 said your boyfriend was buying them.

6 A. \$50 a pill.

7 Q. Okay. Did you have enough money to buy the
8 prescriptions?

9 A. No.

10 Q. Okay. Who was paying for the prescriptions?

11 A. Darryl was.

12 Q. Did you have any kind of insurance?

13 A. Yes.

14 Q. What did you have?

15 A. Through the hospital.

16 Q. Okay. Why didn't you use your insurance to pay for
17 Dr. Smithers's office visit?

18 A. I didn't really know if it was an option. I didn't think
19 he took insurance.

20 Q. Okay. If you had like a real medical problem, would you
21 have gone to Dr. Smithers?

22 A. No.

23 Q. Okay. When you actually saw him, what did he do?

24 A. Just took my blood pressure and asked a few questions.

25 Q. Okay. And did he do anything else?

1 A. Not that I can remember, no.

2 Q. Okay. Did you get your prescriptions?

3 A. Yes.

4 Q. Okay. Now there was a time you went there, did you have

5 to give a urine screen sometimes when you went?

6 A. I think once.

7 Q. Okay. Who took the urine screen?

8 A. There was another guy that worked with him.

9 Q. Okay.

10 A. I don't know his name.

11 Q. All right. And do you remember there was a time in your

12 urine screen you tested positive for hydrocodone?

13 A. Mm-hmm.

14 Q. Is that a "yes"?

15 A. Yes.

16 Q. And he hadn't prescribed you hydrocodone, had he?

17 A. No.

18 Q. So where did you get that?

19 A. Probably bought it.

20 Q. Bought it where?

21 A. Off the street.

22 Q. Okay. So did Dr. Smithers ask you about that?

23 A. Yes.

24 Q. Okay. What did you tell him?

25 A. The truth.

1 Q. You told him the truth?

2 A. I think so. I mean, I can't -- I don't know what I told
3 him, actually. I can't -- I don't know.

4 MR. RAMSEYER: Can I approach the witness,
5 Your Honor?

6 THE COURT: You may.

7 BY MR. RAMSEYER:

8 Q. Looking at MS-62, the patient file from Michelle Smith.
9 It says, "Patient reports hydro due to cough syrup from
10 illness."

11 Did you tell him that?

12 A. I don't -- I don't remember that I did or that I did not.
13 I don't know.

14 Q. Okay. Are you still abusing pain medications?

15 A. No.

16 Q. When did you quit?

17 A. Right -- after the federal agents came and talked to us.
18 And I found a Suboxone program and that's what I do.

19 Q. So you get Suboxone now?

20 A. Yes.

21 Q. It's another opiate.

22 A. I think it's -- I don't know, maybe.

23 Q. Do you get that every month?

24 A. Huh?

25 Q. Do you get that every month?

1 A. Yes.

2 Q. When you went to Dr. Smithers's clinic, were there other
3 patients there?

4 A. Sometimes, yes.

5 Q. Okay. And when you went there, there's a waiting area.
6 Did you wait out there?

7 A. Yeah.

8 Q. And when you went -- when your name got called, or
9 whatever, did you -- what happened?

10 A. We went back to his office, to a room.

11 Q. Okay. What was in that room?

12 A. A chair, computer.

13 Q. Was there a computer?

14 A. A laptop.

15 Q. And who did you speak with?

16 A. Dr. Smithers.

17 Q. All right.

18 A. Well, when you first went, you talked to -- I don't know,
19 they called him a counselor. And, you know, he doesn't -- I
20 don't know what, maybe a Casper. I'm not sure what he did.
21 But you saw him and then you saw Dr. Smithers.

22 Q. Okay. And did there come a time when Darryl Williams
23 quit arranging for you to go down there?

24 A. No.

25 Q. At some point you quit going?

1 A. Well, we got in trouble.

2 Q. All right. That time when you tested positive for
3 hydrocodone, at least in the notes, it says you said you got
4 cough syrup. Did you still get your Schedule II drugs after
5 that?

6 A. Yes.

7 Q. Ma'am, when you were -- when you were illegally using the
8 pills, you say you were snorting them?

9 A. Yes.

10 Q. What did that do to the inside of your nose?

11 A. Made it run. I mean, I don't --

12 Q. It's not good for your nose, is it?

13 A. No.

14 Q. When you were using pills and snorting, how many were you
15 snorting a day?

16 A. Just a couple. Not -- like, maybe one when I got up and
17 then one half through the day or so.

18 Q. Okay.

19 MR. RAMSEYER: Your Honor, I think later in the day,
20 or early tomorrow, we're going to move to admit all the
21 patients' files that are relevant. At this time I'd like to
22 move into evidence Government's Exhibit MS and Government's
23 Exhibit 2, which are the records for Michelle Smith and then
24 the other records I was referencing when talking to the
25 witness.

1 THE COURT: Okay. It will be admitted.

2 MR. RAMSEYER: Its two exhibits, Your Honor, MS-1,
3 and MS-2.

4 THE COURT: They will both be admitted.

5 MR. RAMSEYER: Some other MS-2 are copies of some
6 prescriptions that were found in the office for Ms. Smith.

7 (Government's Exhibit MS-1 marked and received.)

8 (Government Exhibit MS-2 marked and received.)

9 MR. RAMSEYER: Thank you, ma'am. Please answer
10 defense counsel's questions.

11 THE COURT: Okay. Cross-examination?

12 MR. WILLIAMS: May we have a moment at side bar,
13 please?

14 THE COURT: I'm sorry?

15 MR. WILLIAMS: May we have a moment at sidebar,
16 please?

17 THE COURT: Ladies and gentlemen, I need to talk
18 with the lawyers. If you'll follow the bailiff out, please.

19 (Proceedings held in the absence of the jury.)

20 MR. WILLIAMS: Your Honor, I had one issue. I
21 didn't know that he had admitted the entire record of
22 Ms. Smith, and I wanted to make sure I had access to those
23 records. It's my understanding he has admitted the full
24 record. We have no objection to that. And I was just
25 concerned that we had had an agreement that we were going to

1 agree to admit all of the records, and I was concerned with
2 the way he said that he hadn't admitted the records. That's
3 why I wanted just to clarify prior to that. It's my
4 understanding he has. I'm prepared to go forward now, so.

5 THE COURT: Okay. Well, Mr. Williams, before -- I
6 don't have bench conferences. It's too difficult. The
7 defendant needs to be present, too many people in front.

8 MR. WILLIAMS: I understand.

9 THE COURT: It's hard to hear.

10 MR. WILLIAMS: I understand.

11 THE COURT: So I need to remove the jury when you
12 have objections that have to be argued.

13 MR. WILLIAMS: I understand. I apologize.

14 THE COURT: So before you ask for, you know, a
15 conference with the Court, if you would first just quietly
16 talk to the U.S. Attorney. And that's perfectly all right.
17 Do it quietly so the jury doesn't hear. And that way we don't
18 have to remove the jury and, you know, delay the process of
19 the trial.

20 MR. WILLIAMS: I understand. I apologize,
21 Your Honor.

22 THE COURT: Yes, sir.

23 MR. WILLIAMS: Okay.

24 THE COURT: So I've admitted these records.

25 MR. WILLIAMS: Your Honor, I'm ready.

1 THE COURT: So, Mr. Williams, are you ready for your
2 cross-examination of this witness?

3 MR. WILLIAMS: I am, Your Honor.

4 THE COURT: All right. We'll have the jury back in,
5 please.

6 (Proceedings held in the presence of the jury.)

7 THE COURT: All right. Mr. Williams, you may
8 cross-examine.

9 **CROSS-EXAMINATION**

10 BY MR. WILLIAMS:

11 Q. Ms. Smith, I think you testified there earlier, you first
12 started seeing Dr. Smithers in November of 2015; is that
13 correct?

14 A. Yes.

15 Q. And at that time I think you said that you had -- did you
16 discuss several things with Dr. Smithers at that time about
17 what your problems were?

18 A. Yes.

19 Q. Okay. Do you recall telling him you had lower back pain?

20 A. Yes.

21 Q. Okay. And do you recall telling him that on the present
22 pain scale, you said the worst it got was 9 to 10? Does that
23 sound correct?

24 A. Yes. I mean, I don't remember. But, yes.

25 Q. Okay.

1 A. Probably.

2 THE COURT: Well, ma'am, if you don't remember, you
3 can't guess. All right. So if you don't remember, you have
4 to say, "I don't remember." Just don't guess.

5 THE WITNESS: Okay.

6 THE COURT: All right?

7 THE WITNESS: Yes, sir.

8 BY MR. WILLIAMS:

9 Q. If Dr. Smithers had written down your pain at worst was 9
10 to 10, does that sound like something you would have told him?

11 A. I don't remember.

12 Q. Okay.

13 MR. WILLIAMS: May I approach the witness,
14 Your Honor?

15 THE COURT: You may.

16 MR. WILLIAMS: I'll show you what is MS Exhibit 32.

17 BY MR. WILLIAMS:

18 Q. Can you tell the Court what that is, or tell the members
19 of the jury what that is.

20 That is an Initial Pain Assessment Tool.

21 A. Yes.

22 Q. Okay. And what name is the patient's name?

23 A. Michelle Smith.

24 Q. Okay. I'm asking you to show, -- it says "worst pain."
25 What does it say beside that?

1 A. Eight.

2 Q. Okay. That's present pain --

3 A. No, present pain.

4 Q. What does it say "worst pain" is?

5 A. Nine to ten.

6 Q. Okay. Does that sound like something that you would have
7 told him at that time?

8 A. I don't know.

9 Q. Okay. You're not saying he made that up, are you?

10 A. I'm saying I don't remember him asking.

11 Q. Okay. All right. Did he take your blood pressure at
12 that time?

13 A. Yes.

14 Q. Okay. And heart rate?

15 A. Yes.

16 Q. Okay. It says, "Heart rate 65." Does that sound like
17 that would have been --

18 A. Yes.

19 Q. So he did some -- he did talk to you about several
20 things, did he not, when you went in there?

21 A. (Nods head.)

22 Q. I think you told him you had been involved in a motor
23 vehicle accident; is that correct?

24 A. I do remember that, yes.

25 Q. Okay. And that motor vehicle accident was approximately

1 in 2015; is that right?

2 A. Yes.

3 Q. Did the motor vehicle accident occur or not?

4 A. Yeah.

5 Q. Okay. And what happened in the motor vehicle accident?

6 A. I was side swiped.

7 Q. Okay. And so did you actually have back pain of 8 to 9
8 at that point in time?

9 A. No.

10 Q. Okay. So you at that time were lying to Dr. Smithers; is
11 that correct?

12 A. Yes. If I told him that, that was a lie, yes.

13 Q. Okay. And did you tell him that your chief complaint was
14 chronic pain and lower back pain?

15 A. Yes.

16 Q. Okay. And did you tell him that you had primarily seen
17 Dr. Soma before?

18 A. Yes.

19 Q. Okay. It says on the form there that you stated that you
20 had pain bending forward, increased pain; does that sound
21 correct?

22 A. Again, I -- I don't remember him asking those questions.

23 Q. Okay. All right. Did -- how would -- why would he have
24 said that you had trouble bending forward if you hadn't told
25 him that?

1 THE COURT: Well, I don't know that the witness can
2 answer that question, Mr. Williams.

3 MR. WILLIAMS: Okay.

4 BY MR. WILLIAMS:

5 Q. Did you state that you had dull, aching pain?

6 A. Yes.

7 Q. And hot burning pain?

8 A. Yes.

9 Q. It changed in severity, but was always present?

10 A. I don't remember that.

11 Q. Okay. Did you remember telling him that physical therapy
12 hadn't helped you?

13 A. Yes.

14 Q. Okay. And that it caused numbness and tingling in your
15 hips and thigh?

16 A. Yes.

17 Q. Okay. And all of that was incorrect; is that right?

18 A. Yes.

19 Q. Okay. And you told him -- did you provide an MRI to him?

20 A. No.

21 Q. Okay. Did you tell him you had an MRI?

22 A. No.

23 Q. You didn't tell him you had an MRI of the lumbar and the
24 hip in April of 2015?

25 A. No.

1 Q. Okay. You didn't tell him you had an X-ray in April of
2 2015?

3 A. No.

4 Q. So you're saying that you never told him that and if
5 those are in the medical records, they would be incorrect?

6 A. Right.

7 Q. Okay. Did you tell him that you had been to a physical
8 therapist over it?

9 A. Yes.

10 Q. You had been to see an orthopedic surgeon?

11 A. I don't remember saying that.

12 Q. Don't recall? Okay.

13 What kind of medications had you been on prior?

14 A. None.

15 Q. You had not been on any prior medications?

16 A. No.

17 Q. Okay. You hadn't been on anything for -- for anything
18 prior to that, hadn't been on OxyContin 20 milligrams prior to
19 that?

20 A. No.

21 Q. Taken twice daily?

22 A. No.

23 Q. You didn't tell him that?

24 A. I don't remember.

25 Q. You don't recall?

1 A. I don't recall. I don't.

2 Q. Okay. So you're not sure whether you told him or not.

3 MR. WILLIAMS: May I approach the witness,
4 Your Honor?

5 THE COURT: Well, the record is in the record. I
6 mean, she says she can't remember.

7 MR. WILLIAMS: Okay. All right.

8 THE WITNESS: It was 12:00 at night when I saw him.

9 MR. WILLIAMS: Okay.

10 THE WITNESS: So I don't remember.

11 THE COURT: It was 12:00 at night?

12 THE WITNESS: It was late at night, yes.

13 THE COURT: So he was having office hours at that
14 time?

15 THE WITNESS: (Nods head.)

16 THE COURT: Is that a "yes"?

17 THE WITNESS: Yes. Yes.

18 BY MR. WILLIAMS:

19 Q. Do you recall doing --

20 THE COURT: Let me ask you this, ma'am. Did he ask
21 you why you had -- did he ask you where you were from? Is
22 that in the record? Or did he ask you that?

23 THE WITNESS: No. He didn't ask. I mean, he
24 already knew. I didn't, you know, make the appointment. I
25 mean, I just showed up.

1 THE COURT: Did he ask you -- I take it that you
2 told him your address; is that correct?

3 THE WITNESS: Yes, I'm --

4 THE COURT: Did he ask you why you were coming to
5 see him?

6 THE WITNESS: No.

7 THE COURT: Okay. Go ahead.

8 BY MR. WILLIAMS:

9 Q. Ms. Smith, do you remember filling out an SOAPPR form?
10 It was asking you to answer as honestly as possible about your
11 pain. Do you recall filling out one of those?

12 A. Yeah.

13 Q. Okay. And you checked on those different things, did you
14 not?

15 A. Yes.

16 Q. Okay. How often had you had mood swings?

17 A. Yes.

18 Q. Okay. And how often had you felt the need for higher
19 doses of medication to treat your pain? Do you recall that?

20 A. I would have to see --

21 Q. Do you recall filling out the form?

22 A. I would have to see the paper before I can say.

23 MR. WILLIAMS: I'm referring to MS-042.

24 THE WITNESS: I remember, yes.

25 ///

1 BY MR. WILLIAMS:

2 Q. Okay. You completed MS-43; is that correct?

3 A. Yes.

4 Q. And so did you answer those?

5 A. Sometimes he would fill those out and ask me the
6 questions as he went through 'em.

7 Q. Okay. But he answered what you told him, did he not?

8 A. I don't know. I mean, I didn't see what he marked.

9 Q. If it says that you said you often felt need for higher
10 doses of medication to treat your pain, you're saying you lied
11 about that on that form?

12 A. If I said that, yes. I mean, yes, I lied.

13 Q. You saw Dr. Smithers how many times?

14 Actually, let's just go through --

15 A. I don't --

16 Q. Okay. It says -- I think that's on 7-18-16, you saw him
17 on that date; does that sound correct?

18 A. Yes.

19 Q. It says here that your pain was -- pain level was worst
20 was 5 and lowest of 3; does that sound correct?

21 A. Yes.

22 Q. Okay. Indicates that your pain was well controlled by
23 pain -- by the medication.

24 A. Yes.

25 Q. Okay. Do you recall filling out an Opioid Maintenance

1 Agreement?

2 A. Yes.

3 Q. Okay. Do you recall what that agreement said?

4 A. No.

5 Q. Did you read it?

6 A. I don't recall.

7 Q. You don't recall if you read it or not?

8 A. No.

9 Q. So you typically just sign something that you don't read?

10 A. Under those circumstances, yes.

11 Q. Okay. With the Opioid Maintenance Agreement -- you
12 stated that you gave your pills out, did you not? You gave
13 your pills to Mr. Williams? You gave part of your pills --
14 you gave him the prescription, he gave you part of the pills
15 and then he kept part, that's what your testimony was;
16 correct?

17 A. Yes.

18 Q. Okay. And as part of the Opioid Maintenance Agreement,
19 paragraph No. 8 says, "You agree that you will not give or
20 sell your medications to any other person under any
21 circumstances. If you do so, you may endanger that person's
22 health and it is also against the law."

23 Do you recall signing that?

24 A. Yes.

25 Q. Okay. So you violated that agreement that you had --

1 A. Yes.

2 Q. -- there; correct?

3 You didn't tell Dr. Smithers what you were doing,
4 did you?

5 A. No.

6 Q. Because you knew he would cut you off and he wouldn't see
7 you anymore, didn't you?

8 You knew that he would dismiss you as a patient; is
9 that correct?

10 A. If I told him?

11 Q. Yeah.

12 That's what your fear was, wasn't it?

13 A. My fear?

14 Q. Yeah.

15 A. I didn't -- I mean, it just -- he never asked.

16 Q. Paragraph No. 10, I'm referring to MS-67, Document MS-67,
17 states that, "You will communicate fully to your physician to
18 the best of your ability at the initial and all follow-up
19 visits your pain level and functional activity level, along
20 with any side effects of the medication. This information
21 allows your physician to adjust your treatment plan
22 accordingly."

23 You violated that agreement, didn't you?

24 A. Yeah.

25 Q. You didn't tell him what was wrong with you.

1 A. Mm-hmm.

2 Q. You lied to him about what all was happening with you.
3 You lied to him about having an MRI done. Lied to him about
4 your pain level. You can answer.

5 A. Yes.

6 Q. Lied to him about every one of those, did you not?

7 A. Yes.

8 Q. On your initial assessment, Dr. Smithers came up with you
9 had chronic back pain, that was due to what you had told him;
10 correct?

11 A. Yes.

12 MR. RAMSEYER: Your Honor, objection.

13 THE COURT: She wouldn't know that.

14 MR. WILLIAMS: I withdraw that.

15 THE COURT: Mr. Williams, move along, please.

16 BY MR. WILLIAMS:

17 Q. Ms. Smith, have you ever been charged with a crime?

18 A. No.

19 Q. You've not.

20 A. Other than speeding or, like, deer tags or something,
21 but...

22 Q. No felony charge or --

23 A. No.

24 Q. -- crime of lying, cheating, or stealing?

25 A. No.

1 MR. WILLIAMS: May I have just a moment, Your Honor?

2 BY MR. WILLIAMS:

3 Q. Your testimony is that you had never taken opiates before
4 prior to this; is that correct?

5 A. Yes.

6 MR. WILLIAMS: Okay. No further questions.

7 THE COURT: All right. Any --

8 MR. RAMSEYER: I just didn't hear the last question.

9 MR. WILLIAMS: I asked her --

10 THE COURT: Wait a minute.

11 THE WITNESS: Well, can I clarify something --

12 THE COURT: Yes, ma'am.

13 THE WITNESS: -- please?

14 I've had two C-sections, and I was given medicine
15 after those. But that's -- was maybe hydrocodone and that's
16 been it.

17 THE COURT: The question to her was whether she had
18 taken opiates before this. Or the question was: "Your
19 testimony is that you'd never taken opiates before this; is
20 that correct?"

21 And she said, "Yes."

22 That was the answer. And she's just added on to
23 what you've heard.

24 ///

25 ///

REDIRECT EXAMINATION

BY MR. RAMSEYER:

Q. So, ma'am, when you got C-sections, you had hydrocodone for a few days?

A. Yes.

Q. But you've taken opiates on the street, haven't you? You said you snorted them.

A. Yes.

Q. Was that all after you went to Dr. Smithers?

A. Yes.

Q. All? You never snorted an opiate pill before you went to Dr. Smithers?

A. Snorted? No.

Q. Did you abuse them before then?

A. You mean --

Q. Did you take pills that weren't prescribed to you by a doctor before?

A. I have, yes.

Q. And those were opiates?

A. Yes.

Q. At a party or something? Or what were you doing?

A. Yeah. I mean, no, not a party. Like, my boyfriend would, you know -- he was prescribed them and I'd have a headache and take 'em. But, you know, it wasn't to get high then.

1 Q. Okay. Now, the defense attorney asked you some questions
2 about these documents you were signing. You didn't read 'em,
3 did you?

4 A. I can't remember. I mean, I don't know if I -- typically
5 I would, but...

6 Q. Well, let me ask you, when you went to Dr. Smithers, were
7 you going to get real medical treatment?

8 A. No.

9 Q. What were you going for?

10 A. Pills.

11 Q. Okay. And were you going to sign anything you had to
12 sign to get pills?

13 A. Yes.

14 Q. All right. For instance, I'm going to show you page
15 MS-67, which is this agreement.

16 MR. RAMSEYER: If we could switch to this. It's
17 already introduced, so the jury can see it.

18 BY MR. RAMSEYER:

19 Q. It's already been introduced into evidence. Page 667.
20 This is an Agreement for Opioid Maintenance Therapy for Pain.
21 Here's page 1. Here's page 2. Is that your signature down
22 there?

23 A. Yes.

24 Q. It's dated November 30th of '15; correct?

25 A. Yeah.

1 Q. And one of the things on this agreement is you're
2 supposed to tell the doctor which pharmacy you're going to
3 use, because you can only use one pharmacy according to
4 agreement. Did you do that, No. 2?

5 A. Yes.

6 Q. You didn't even fill it out, did you?

7 A. No.

8 Q. Just signed the back of the form.

9 Anybody ask you, you have to fill this out. For
10 this to mean something, it has to be filled out. Anybody say
11 that?

12 A. No.

13 Q. And every time you went to see Dr. Smithers, did you get
14 what you wanted?

15 A. Yes.

16 MR. RAMSEYER: Thank you.

17 THE COURT: Anything further?

18 **RECROSS-EXAMINATION**

19 BY MR. WILLIAMS:

20 Q. Ms. Smith, at the time that you filled that out, did you
21 indicate to Dr. Smithers that you didn't know which pharmacy
22 you were going to use at that time? Do you recall saying
23 that?

24 A. I don't recall.

25 Q. Okay. You also stated, I think, that you had had a tubal

1 ligation; is that true?

2 A. Yes.

3 Q. Okay. And that was back in 2008?

4 A. Yes.

5 Q. Okay. Did you receive pain medicine for that?

6 A. I had a C-section, and they done it right after -- you
7 know, it was more procedure, back to back.

8 Q. Did you receive any kind of pain medicine for that?

9 A. When I had the C-section, yes.

10 MR. WILLIAMS: Okay. All right. Thank you.

11 No further questions.

12 THE COURT: Anything further?

13 MR. RAMSEYER: No further questions, Your Honor.

14 THE COURT: All right. Thank you, ma'am.

15 You may step down.

16 May this witness be excused?

17 MR. RAMSEYER: Your Honor, we'd ask that she be
18 subject to recall but not have to stay here today.

19 THE COURT: Okay. Ma'am, you may leave today. You
20 may be asked to come back. If you are, you have to come back
21 here. Do you understand that?

22 THE WITNESS: Yes. Thank you.

23 THE COURT: All right. We're going to take our
24 luncheon break at this time. Ladies and gentlemen, if you'll
25 follow the bailiff out. We're going to be in recess for one

1 hour. One hour so that you can have lunch. Please remember
2 my instructions to you about not discussing this case or
3 permitting anyone to discuss it with you or communicating in
4 any way about this case.

5 All right. Have a good lunch. If you'll follow the
6 bailiff out, please.

7 (Proceedings held in the absence of the jury.)

8 THE COURT: All right. Counsel, is there anything
9 we need to take up before we take a recess?

10 MR. RAMSEYER: No, Your Honor.

11 MR. WILLIAMS: No, Your Honor.

12 THE COURT: If not, we'll be in recess for one hour.

13 (Proceedings suspended at 12:00 p.m. and resumed at 1:10
14 p.m.)

15 THE COURT: Are we ready for the jury?

16 MR. RAMSEYER: Yes, Your Honor.

17 MR. WILLIAMS: Yes, Your Honor.

18 THE COURT: All right. We'll have the jury in.

19 MR. RAMSEYER: Your Honor, I would tender to the
20 Court and would move to admit the patient files and
21 prescriptions, and the defense has agreed to those. I have a
22 list that I'll go through, with the Court's permission.

23 THE COURT: All right. They'll be admitted.

24 So you're going to tell the Court which number and
25 so on?

1 MR. RAMSEYER: Yes, Your Honor.

2 (Proceedings held in the presence of the jury.)

3 THE COURT: All right. Ladies and gentlemen, I hope
4 you got some relaxation at lunch. We're ready to go again.

5 MR. RAMSEYER: We are, Your Honor.

6 Your Honor, there's some exhibits we'd like to
7 introduce. I have a list to give to the clerk of them. But
8 it's numerous patient files and also the prescriptions that
9 are charged in the indictment. And so for the patient files,
10 there may be different fragments if the files were found in
11 different parts of the office.

12 So to begin, RB-1 and RB-2 are patient files for
13 Robert Battaglia. RB-3 -- and the way these are numbered is
14 they go with the count numbers. So RB-3 through RB-20 are the
15 prescriptions that are charged in Counts 3 through 20. So for
16 Robert Battaglia, prescriptions for RB-3 through RB-20.

17 For Frank Blair, patient files FB-1 and FB-2. Then
18 the prescriptions are FB-21 through FB-55.

19 For Steve Blevins, the patient file is SB. The
20 prescriptions are SB-56 through 59.

21 For Geneva Bowman, the patient files are GB-1, GB-2,
22 and GB-3. And the prescriptions are GB-60 through GB-78.

23 I'm sorry -- yeah, 78.

24 Then for Jason Bowman, the patient file is JB. The
25 prescriptions are JB-79 through JB-100.

1 For Deborah Brown, patient file DB-1 and DB-2. And
2 the prescription is DB-102.

3 For Clayton Colegrove, patient files are CC-1 and
4 CC-2. Prescriptions are CC-103 through CC-113.

5 For Janet Craycraft, patient file is JC. The
6 prescriptions are JC-114 through JC-118.

7 For Timmy Damron, the patient file is TD. The
8 prescriptions are TD-119 through TD-121.

9 For Hassel Daniels, the patient files are HD-1, HD-2
10 and HD-3. The prescriptions are HD-122 through HD-141.

11 For Robert Daniels, the patient files are RD-1,
12 RD-2, RD-3 and RD-4. And the prescriptions are RD-142 through
13 RD-164.

14 For Donna Dotson, the patient files are DD-1 and
15 DD-2. Prescriptions are DD-165 through DD-193.

16 For Stephen Fearin, that's F-e-a-r-i-n, the patient
17 file is SF. The prescriptions are SF-194 and 195.

18 For Brenda Fisher, the patient file is BF-1 and
19 BF-2. The prescriptions are BF-196 through BF-215.

20 For Candy George, the patient file is CG. The
21 prescriptions are CG-216 through CG-221.

22 For Bryan Harlow, the patient file is BH, BH-2, and
23 BH-3. And the exhibit numbers are BHa-222 through 244 for the
24 prescriptions for Bryan Harlow.

25 For John Harlow, the patient files are JHa and

1 JHa-2. That's John Harlow. And the prescriptions are JHa-245
2 through JHa-265.

3 For Pamela Harlow, the patient files are PH and
4 PH-2. The prescriptions are PH-266 through PH-287.

5 For Heather Hartshorn, the patient file is HH. The
6 prescriptions are HH-288 through HH-299.

7 For Bobby Hopkins, the patient file is BHo-1 and
8 BHo-2. And the prescriptions are BHo-300 through 304.

9 For Donald Hopkins, the patient files are DH-1 and
10 DH-2. The prescriptions are DH-305 and 306.

11 For Samuel Hubbard, the patient file is SH and SH-2.
12 The prescriptions are SH-307 through SH-329.

13 For Blakey Hurley, the patient file is BHu. And the
14 prescriptions are BHu-330 through BHu-341.

15 For Deanna Jessie, it's DJ-1, DJ-2, DJ-3, and DJ-4
16 for the patient file. And for the prescriptions, DJ-342
17 through DJ-373.

18 For Rebecca Jessie, the patient file is ReJ-1, -2
19 and -3. And the ReJ-374 through ReJ-415.

20 For Ricky Jessie, RiJ-1, RiJ-2 are the patient file
21 pieces. And the prescription is RiJ-416 through RiJ-458.

22 For Neil Jewell, patient file is NJ. The
23 prescriptions are NJ-459 through 462.

24 For Lora Kicklighter, the patient file pieces are LK
25 and LK-2. For the prescriptions, it's LK-463 through LK-477.

1 For Shannon Kovalesski, patient files are SK-1, SK-2.
2 The prescription is SK-478 through SK-500.

3 For Billie Lindsay, the patient file is BL. The
4 prescriptions are BL-501 through 504.

5 For James Long, the patient file is JL. The
6 prescriptions are JL-505 through 508.

7 For Joshua Marian, the patient file is JMar and
8 JMar-2. And the prescriptions are JMar-509 through JMar-534.

9 For Jerry Maynard, the patient files are JMay-1 and
10 JMay-2, and JMay-3. And the prescriptions are JMay-535
11 through JMay-577.

12 For Amanda Miles, prescriptions -- or the patient
13 files are AM-1 and -2. The prescriptions are AM-578
14 through 585.

15 For Charlene Miller, the patient file is ChM.
16 Excuse me. ChM, ChM-2, ChM-3, ChM-4, and ChM-5.
17 Prescriptions are ChM-586 through ChM-604.

18 For Connie Miller, patient file is CoM, CoM-2,
19 CoM-3. Prescriptions are CoM-605 to 627.

20 Jennifer Moore, the patient files are JMo-1, JMo-2,
21 JMo-3. Prescriptions are JMo-628 to JMo-660.

22 For Sharon Mullins, patient file SM-1 and SM-2.
23 Prescriptions SM-661 through SM-665.

24 For Billy Parsley, patient file is BP.
25 Prescriptions are BP-666 through BP-699.

1 For Jessica Parsley, patient file JP. Prescriptions
2 are JP-700 through JP-716.

3 For Deborah Reynolds, patient records are DR and
4 DR-2. And the prescriptions are DR-717 to DR-724.

5 For Michelle Smith, patient files are MS and MS-2.
6 And the prescriptions are MS-725 to MS-739.

7 For Stancy Turner, patient file is ST.
8 Prescriptions are ST-740 to ST-759.

9 For Andre White, patient records are AW-1, -2, and
10 -3. And the prescriptions are AW-760 and 761.

11 For Thomas Wiley, the patient file is TW-1 and TW-2.
12 Prescriptions are TW-762 through TW-783.

13 For Darryl Williams, it's DWi-1, DWi-2, and DWi-3.
14 And prescriptions are DWi-784 through DWi-803.

15 For Franklin Williams, the patient file is FW and
16 FW-2. Prescriptions are FW-804 through FW-822.

17 For Wesley Williams, the patient files WW, WW-2,
18 WW-3. Prescriptions are WW-823 through WW-844.

19 For David Wood, the patient file is DWo-1 and DWo-2.
20 Prescriptions are DWo-845 to DWo-846.

21 For Larry Workman, the patient files are LW-1 and
22 LW-2. And for the prescriptions, it's LW-847 to LW-862.

23 So, Your Honor, at this time we would move those
24 items into evidence.

25 THE COURT: They will be admitted.

1 (Government's Exhibit List received.)

2 MR. RAMSEYER: Your Honor, we'd also present into
3 evidence the Google map image which was presented in opening,
4 which is Government's Exhibit 50.

5 THE COURT: Without objection, it will be admitted.

6 MR. RAMSEYER: Thank you, Your Honor.

7 (Government's Exhibit 50 received.)

8 THE COURT: All right. You may call your next
9 witness.

10 MR. JUHAN: Your Honor, the United States calls
11 Bryan Harlow.

12 THE CLERK: Do you solemnly swear that the testimony
13 you're about to give in this case shall be the truth, the
14 whole truth, and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: You may be seated.

17 **BRYAN HARLOW,**

18 Called as a witness herein by the Government, having been
19 first duly sworn, was examined and testified as follows:

20 **DIRECT EXAMINATION**

21 BY MR. JUHAN:

22 Q. Hello, sir.

23 A. Hello.

24 Q. Please tell the jury who you are.

25 A. My name is Bryan Harlow.

1 Q. Do you spell your name Brian with an "I" or "Y"?

2 A. B-r-y-a-n.

3 Q. Okay. And your address is [REDACTED]
4 Pinsonburg, Kentucky; is that right?

5 A. Pinsonfork.

6 Q. Pinsonfork, I'm sorry.

7 And you used to be a coal miner; correct?

8 A. That's what I do, yes.

9 THE COURT: Sir, if you'll speak into the
10 microphone, just speak straight into the microphone. All
11 right.

12 THE WITNESS: Yes, I do work as a coal miner.

13 BY MR. JUHAN:

14 Q. You still work now?

15 A. I do now, yeah.

16 Q. Okay. Is Pinsonfork, Kentucky, near Mount Sterling,
17 Kentucky?

18 A. No, not -- no. I mean -- Mount Sterling, not really, no.

19 Q. Okay. Who is your girlfriend?

20 A. Michelle Smith.

21 Q. And you and Miss Smith rode over here today; correct?

22 A. We what?

23 Q. Did you guys come over together?

24 A. Oh, yes.

25 Q. Okay. And, in fact, Ms. Smith has given you some of her

1 pain medication before, hasn't she?

2 A. Yes.

3 Q. And when was this happening?

4 A. When I was run out long times and just whenever. Most of
5 the time, I mean, I would take quite a bit.

6 Q. Okay. This -- so 2015?

7 A. 2015? Oh, pills. Sure. Well, probably, or more. More
8 than half, I would say. I would probably take more than half
9 of hers.

10 Q. Fair to say, you're addicted to pills, sir?

11 A. I am. I was.

12 Q. And you were addicted to pills in 2015 through 2017?

13 A. Yes, I was.

14 Q. And we're talking about pills, what particular kinds of
15 pills were you addicted to?

16 A. Just more -- any pain medicine. I had had surgery and I
17 got, you know, started taking them and just more and more.

18 Q. What about oxycodone?

19 A. Yes.

20 Q. What about oxy -- what about hydrocodone?

21 A. Yes.

22 Q. Now, at some point in time you originally -- or at some
23 point in time you saw Dr. Joel Smithers; is that right?

24 A. Yes.

25 Q. But there was a doctor you were going to before him?

1 A. Yes.

2 Q. And what happened with that doctor?

3 A. They said that they -- they told me that -- I don't know
4 how that happened, but they said I didn't have the medicine in
5 my system. They gave me a urine test and told me I didn't
6 have the medicine in my system and I couldn't come back. My
7 compensation was running out, and I was on compensation at
8 that time seeing that doctor and it was coming down to a
9 close. They told me I didn't have it in my system.

10 Q. So the doctor kicked you out?

11 A. Pretty much.

12 Q. Wouldn't let you come back.

13 And after that is when you went to see Dr. Smithers?

14 A. I don't know the timeframe, I mean, really on that.

15 Q. Okay. Where did you go and see Dr. Smithers?

16 A. In Martinsville.

17 Q. Virginia?

18 A. Virginia.

19 Q. But you live in Kentucky?

20 A. Yes.

21 Q. And you lived in Kentucky when you were going to see
22 Dr. Smithers?

23 A. Yes.

24 Q. So how long was this drive that you would take to
25 Dr. Smithers from Kentucky all the way to Martinsville?

1 A. For me?

2 Q. Yeah.

3 A. Four, five hours.

4 Q. And then you have to drive back?

5 A. Yes.

6 Q. So 8 to 10-hour round trip; right?

7 A. Pretty close, yeah.

8 Q. Why would you drive 8 to 10 hours to see a doctor two

9 states over?

10 A. There wasn't -- there wasn't no doctors in my area like

11 that to see.

12 Q. None --

13 A. No other doctors, I mean, in that area. In my area.

14 Q. That would give you the pills you wanted?

15 A. For that kind, yes.

16 Q. So let's talk about how it came about that you ended up

17 seeing Dr. Smithers. Do you know a guy named Darryl Williams?

18 A. Yes, I do.

19 Q. And so how did you get connected with Dr. Smithers?

20 A. Well, I was getting -- I mean, off the street, I would

21 get the pills off of Darryl, and he kind of told me that's

22 where he was -- he's set me up.

23 Q. So fair to say that you knew about Dr. Smithers from

24 Darryl Williams?

25 A. Mm-hmm. Yes.

1 Q. And so Mr. Williams approached you about going to see
2 Smithers. Why? What was the deal?

3 A. Well --

4 MR. WILLIAMS: Your Honor, I object to hearsay to
5 whatever Mr. Williams told him.

6 MR. JUHAN: It's not for the fact, Your Honor. I'm
7 trying to understand why he did what he did.

8 THE COURT: Well, is it part of a conspiracy, do you
9 believe?

10 MR. JUHAN: That also, Your Honor.

11 THE COURT: All right. I'll overrule the objection.

12 BY MR. JUHAN:

13 Q. So what was the deal when Mr. Williams came to you? Why
14 was he coming to you?

15 A. Well, I was -- I was buying the pills off of him to try
16 to -- to make my cost lower. I asked him, you know, to get me
17 in to see the doctor. That's how that happened. He made the
18 appointment and told me when to go, and I went.

19 Q. Why were you driving to go see Dr. Smithers? What did
20 you get out of it?

21 A. Just the drug -- the pills. That's what it was about.

22 Q. So it wasn't a legitimate medical reason for going to see
23 him?

24 A. Well, I mean, not that type, I would say, I guess, you
25 know, I would say. I mean, I do have pain in my shoulder.

1 Had a torn rotator cuff previously. I did have pain, but
2 probably --

3 Q. Who would pay for you to go see Dr. Smithers?

4 A. Darryl.

5 Q. So how would that work? Before you leave Kentucky, how
6 does it go from the time you leave to the time you get back,
7 money-wise?

8 A. He -- sometimes he would give me the money. Sometimes, I
9 mean, you know, he would have -- they would have to wait. I
10 mean, it was just -- I mean, then he would wire it down or
11 whatever. I mean, just -- and then you would go and pick up
12 the money and then go to the doctor.

13 Q. How much money would he give you at one time?

14 A. I think like 3-, \$400, just enough to pay for the gas and
15 something to eat or whatever and the doctor visit.

16 Q. So you give Dr. Smithers the money, you get your
17 prescriptions; right?

18 A. Yes.

19 Q. Who pays for the pharmacy -- well, when they get filled,
20 who pays for that?

21 A. Darryl.

22 Q. How much does that cost?

23 A. Eight -- \$9,000, I guess. You know, 800, 900, you know,
24 just different which one -- pharmacy you go to.

25 Q. So one trip, when you add up the office visit plus the

1 pills, is at or about a thousand dollars?

2 A. Yeah, \$1,500 probably.

3 THE COURT: I can't understand you, sir.

4 THE WITNESS: \$1,500.

5 THE COURT: Okay. So all together \$1,500 to pay the
6 doctor and --

7 THE WITNESS: Yeah, and pills.

8 THE COURT: Wait a minute. And pay the pharmacy;
9 right?

10 THE WITNESS: Yes.

11 THE COURT: Okay. Go ahead.

12 BY MR. JUHAN:

13 Q. How would the pill exchange work after you got the pills
14 and the prescriptions from Dr. Smithers? Between you and
15 Darryl, how would that work?

16 A. I would bring -- I mean, you would bring the pills back
17 and you'd count. He would get half and you would get the
18 other half.

19 Q. Would he fill the scripts sometimes?

20 A. Sometimes, yes.

21 Q. How many people, to your knowledge, have the same --

22 THE COURT: I'm not sure I follow. The question
23 was, "Would he fill the scripts sometimes?" What do you mean
24 by that.

25 MR. JUHAN: The prescriptions, I'm sorry.

1 THE COURT: I know that. But "would he fill
2 them," take them to a pharmacy or what?

3 BY MR. JUHAN:

4 Q. Who would take them to the pharmacy, the prescriptions?

5 A. Sometimes it would be just -- sometimes it would be
6 Darryl, you know, would take them. Sometimes I would take
7 them. Sometimes, I mean, he would just drop the scripts off
8 and your ID, they would be filled and somebody would bring
9 them back. Just different ones -- pills.

10 Q. So sometimes you would drop them off but someone else
11 would pick up?

12 A. No, I mean --

13 Q. I'm trying to understand what you're saying.

14 A. No, not really. You would get them back usually that
15 same day. So if you went, you got them. Sometimes, I mean,
16 there would be more than one, and they would just --

17 THE COURT: So let me understand, just to make sure
18 I understand how this worked. So Mr. Williams would give you
19 the money before you came from Kentucky to Martinsville,
20 right, to see the doctor?

21 THE WITNESS: Most of the time. Sometimes he
22 wouldn't. I mean, sometimes he wouldn't have it all together
23 or something, I guess, and he would wire it to, like, a
24 Walmart or whatever in Virginia.

25 THE COURT: Okay. But he paid the doctor; right?

1 THE WITNESS: Not physically. You know, I paid --
2 he paid for it, yes. It was his money, yes.

3 THE COURT: Well, right, that's what I meant.

4 THE WITNESS: Yes.

5 THE COURT: However you -- however Dr. Smithers got
6 the money, it came from Mr. Williams; right?

7 THE WITNESS: Yes.

8 THE COURT: But you would be the patient. And you
9 would go to Dr. Smithers and get the prescription; --

10 THE WITNESS: Yes.

11 THE COURT: -- right?

12 And then you are -- Mr. Williams would take the
13 prescription to a pharmacy and get it filled. And, again,
14 Mr. Williams was paying for the pharmacy.

15 THE WITNESS: Yes.

16 THE COURT: All right. Okay. And so that's the
17 way -- and then you would split the pills; he would get half
18 of them and you would get half of them.

19 THE WITNESS: Yeah. Yes.

20 THE COURT: Okay. Go ahead.

21 BY MR. JUHAN:

22 Q. Who else had this arrangement that you know of with
23 Mr. Williams?

24 A. There was three -- you know, Michelle, she had it. And
25 there was a few others that -- I mean, I really don't know how

1 many. But --

2 Q. What about Greg Harlow?

3 A. Yes, he had.

4 Q. What about Geneva Bowman?

5 A. She had one, yeah, I don't --

6 Q. What about Michael Robinette?

7 A. Yes. I mean, I don't know their deals, but I know they
8 went in too.

9 Q. Would Dr. Smithers ever mail you pills in the mail?

10 A. Not to me. But I'm assuming that's where they come from.
11 They didn't come to my house, they come to --

12 Q. Sir, do you remember testifying in front of the grand
13 jury in September of 2017?

14 A. Yes.

15 Q. Do you remember swearing an oath to tell the truth?

16 A. I mean, they didn't come to my house. But they were
17 delivered in the mail, I guess, I mean, is what they said.

18 Q. So let me ask my question again then. Would there ever
19 be prescriptions mailed from Dr. Smithers to your home?

20 A. Not to my home. Not to my house. It was to Darryl's
21 house, I guess, is where they was sent to.

22 Q. So maybe I'm asking it poorly then. Would prescriptions
23 that were your prescriptions be mailed to Darryl Williams's
24 house?

25 A. I'm assuming -- that's what they said, the way they said

1 they were --

2 MR. WILLIAMS: Objection as to hearsay, Your Honor.

3 THE WITNESS: I don't know how they --

4 THE COURT: Excuse me. I'll overrule the objection.

5 Well, so these pills, they were for prescriptions in
6 your name, but they were mailed to Mr. Williams; is that
7 right?

8 THE WITNESS: I didn't see the doctor. And they --
9 we got prescriptions, so.

10 THE COURT: I know. But they were prescriptions
11 that were supposedly for you; --

12 THE WITNESS: Yes.

13 THE COURT: -- is that right?

14 THE WITNESS: Yes.

15 THE COURT: Did they have your name on the bottle,
16 on the pill bottle?

17 THE WITNESS: The bottle, yes.

18 THE COURT: So they were for you, but you didn't see
19 the doctor. You got them from Mr. Williams who must have
20 gotten them some other way.

21 THE WITNESS: I didn't see the prescription, you
22 know, when it was -- he got the prescription, you know, so I
23 don't know. I can't answer that.

24 THE COURT: Well, but you said the pill bottle had
25 your name on it.

1 THE WITNESS: Oh, yes. They were mine. I mean,
2 just to say -- yes, they were mailed. I mean, he told me
3 that, you know, in the bad months in the winter that we
4 wouldn't have to drive and that they would be mailed. So that
5 was one of the times that I didn't go get mine picked up and
6 they were --

7 THE COURT: And you didn't see the doctor --

8 THE WITNESS: -- the pills were there.

9 THE COURT: You didn't see the doctor to get those
10 pills?

11 THE WITNESS: No. Not that time, no. Two or three
12 times, I think, at the most.

13 THE COURT: Okay. Go ahead.

14 BY MR. JUHAN:

15 Q. So I want to focus on the time that you yourself would
16 fill the prescriptions. In what states would you fill those
17 prescriptions?

18 A. West Virginia.

19 Q. What about Indiana?

20 A. I never went there.

21 Q. If -- so if a prescription was filled under your name
22 from a place in Indiana, that wouldn't have been you that
23 filled it; right?

24 A. No.

25 Q. What about Virginia?

1 A. Oh, yes, I do.

2 Q. When you went to Dr. Smithers's office, what kind of
3 staff did he have there?

4 A. There was a guy there one time, and I don't know his
5 name. Then the one time there was a receptionist. And then
6 the other few times there was another guy that was giving
7 urine test and taking blood pressure.

8 Q. Do you remember getting interviewed by the DEA agents on
9 August 10th of 2018?

10 A. Yes.

11 Q. And you would have tried to tell them the truth; right?

12 A. Yes.

13 Q. Do you remember telling them that there wasn't any nurses
14 or receptionist, just Dr. Smithers?

15 A. Not that, no.

16 Q. You don't remember telling them that?

17 A. Not exactly that. I mean, there was a lady there. She
18 wasn't -- there wasn't no nurses. And there was just this guy
19 who you give your money to. Sometimes he would take your
20 blood pressure -- I took a blood pressure, I don't know, I
21 can't really remember who took my blood pressure. But he
22 would take the money. And he said he was a cop. I don't know
23 what his name was really. And then, but then there was one
24 time whenever we showed up, there was a lady there. But
25 whenever I walked in, she was leaving.

1 Q. It's fair to say it's pretty small staff, huh?

2 A. Yes.

3 MR. WILLIAMS: Objection. Calls for speculation.
4 It's argumentative.

5 THE COURT: Overrule the objection.

6 BY MR. JUHAN:

7 Q. Did you get oxycodone from Dr. Smithers?

8 A. Oxycodone, yes.

9 Q. You didn't really need that, did you?

10 A. What?

11 Q. You didn't really need the oxycodone, did you?

12 A. No.

13 Q. Did Dr. Smithers ever warn you about the effects of the
14 medicine he was giving you?

15 A. I can't really remember.

16 Q. Well, you said earlier you remember talking to the agents
17 on August 10th, 2018; correct?

18 A. Somewhat, yes. I mean, but, I don't -- I can't remember.
19 I mean -- I don't know.

20 Q. So do you think maybe that if you saw the report from
21 that interview it might refresh your recollection about what
22 you told the agents?

23 A. Maybe.

24 MR. JUHAN: Your Honor, may I approach?

25 THE COURT: You may.

1 MR. WILLIAMS: Your Honor, I would argue that that's
2 a hearsay statement if he's looking at what the agents have
3 written. I think that's a hearsay statement. I don't think
4 it would be subject to be refreshing recollection.

5 THE COURT: I'll overrule the objection.

6 Go ahead.

7 BY MR. JUHAN:

8 Q. Now, sir, I just want you to read this to yourself and
9 not speak aloud. Okay. I've underlined that sentence for
10 you. Let me know when you're done reading.

11 A. Okay.

12 Q. Now, does that refresh your recollection about whether
13 Dr. Smithers ever counseled you about the effects of the
14 medicine he was giving you?

15 A. I guess not. You know, it was -- I don't really
16 remember. I mean, a lot -- it's been -- not that I remember.
17 I mean, I really don't remember what we all talked about. It
18 wasn't really much anything. I mean, it was just in and out.

19 Q. So you and Dr. Smithers really didn't talk about anything
20 when you came to your appointments, did you? That's your
21 testimony.

22 A. Not -- I mean, how was he paying? You'd tell him, you
23 know, it's this and --

24 Q. No exam really?

25 A. No.

1 MR. JUHAN: No further questions, Your Honor.

2 THE COURT: All right. Cross-examination?

3 **CROSS-EXAMINATION**

4 BY MR. WILLIAMS:

5 Q. Good afternoon, Mr. Harlow. How are you?

6 A. Okay.

7 Q. Okay. Now, Mr. Juhan was talking to you there a little
8 bit about the -- about your recollection and stuff of whether
9 or not you had been counseled by Dr. Smithers. You don't
10 really remember, do you, whether or not he counseled you?

11 A. Not really what was said. I mean, not -- I mean, it
12 really wasn't anything. I mean, it was just in and out. I
13 mean, but --

14 Q. Now, you had stated earlier you had this agreement with
15 Darryl Williams; is that correct?

16 A. Yes.

17 Q. Okay. You obviously never told Dr. Smithers that, did
18 you?

19 A. He -- no, I didn't come out and say this, but he knew
20 where it was coming from. He would -- I would tell him
21 sometimes that I was waiting on Darryl.

22 Q. Okay. Now did -- with respect to -- do you recall
23 signing an Opioid Maintenance Therapy Agreement with
24 Dr. Smithers?

25 A. Do I remember signing that?

1 Q. Yeah.

2 A. No, I don't remember signing that.

3 Q. I'm going to show you this --

4 MR. WILLIAMS: May I approach the witness,
5 Your Honor?

6 THE COURT: You may.

7 BY MR. WILLIAMS:

8 Q. I'm going to show you BH page 12, also to page 13. I'd
9 ask you just to look at that real quick.

10 Page 13.

11 Is that your signature down at the bottom?

12 A. Yes, it is.

13 Q. Okay. And --

14 MR. JUHAN: Mr. Williams, I'm sorry, what page are
15 we on?

16 MR. WILLIAMS: 12, 13.

17 BY MR. WILLIAMS:

18 Q. And did you read that statement when you signed it?

19 A. Probably read, looked over it.

20 Q. Dr. Smithers went over it with you, didn't he? Did he
21 read it to you?

22 A. Nah. Well, probably -- I don't think so.

23 Q. Okay.

24 A. He was -- the first time I went was, like -- the first
25 time I seen the doctor was at, like, 1:00 at night. I really

1 can't remember, I mean, what went on that night.

2 Q. But this is your signature on this document; correct?

3 A. Yes, it is.

4 THE COURT: Let me ask you this. You saw him at
5 1:00 at night. His office was open at 1:00 at night?

6 THE WITNESS: We were there that long day, yes, the
7 first time I went. And probably a couple other times. I
8 mean, it was really late.

9 THE COURT: Okay. Go ahead.

10 BY MR. WILLIAMS:

11 Q. And when you signed that Opioid Maintenance Therapy
12 Agreement, did you read and understand that No. 8 said, "You
13 may not give or sell your medications to any other person
14 under any circumstances. If you do, you could endanger that
15 person's health and it's also against the law."

16 You don't recall signing that document?

17 A. Yes, I remember. I mean, I don't remember -- I mean
18 exactly. I do now that you showed me. I know that I would
19 have signed that, yes. Probably would have looked over it and
20 read it, but --

21 Q. Paragraph 10 says you agree to cooperate fully with him,
22 right? Provide him good information?

23 A. Yes.

24 Q. Okay. And -- but your testimony is here today that you
25 didn't have anything really wrong with you; is that what

1 you're saying?

2 A. No, I'm not saying I didn't have anything wrong with me.

3 Q. You were injured in a coal mine, weren't you?

4 A. Yes, I was.

5 Q. Okay. You had an MRI that was done --

6 A. Yes, I did.

7 Q. -- that was provided to Dr. Smithers. It was of your
8 right shoulder and cervical spine, wasn't it?

9 A. Yes.

10 Q. That's part of your medical record, isn't it?

11 A. Yes.

12 Q. Okay. And so did you have pain or did you not?

13 A. I had somewhat pain, yes.

14 Q. Okay. And, in fact, when you went in on 9-3-15, do you
15 remember Dr. Smithers going over the intake form with you?

16 A. I can't say I remember, no. But I'm sure --

17 Q. Okay. It says that the pain began on 6-10-13, and you
18 were injured in a coal mine; does that correct?

19 A. Yes, I was.

20 Q. It states that you had hot burning pain, shooting pain,
21 stabbing and sharp pain, cramping, numbness. Does that sound
22 like what you reported to him?

23 A. Yeah. Probably, yes.

24 Q. Was that true?

25 A. At the time, yes, I did have.

1 Q. Okay. And so your pain says it was at worst in the
2 mornings and evenings; is that correct?

3 A. Yes.

4 Q. Okay. And said your pain, the worst it got was 10 and
5 the best it got was 8; was that correct?

6 A. That's probably what I put down, yes.

7 Q. Okay. So that was -- you agree with that, okay?

8 A. Yes.

9 Q. You agree, you said your pain increased with changes in
10 the weather and climbing stairs and rising from a seated
11 position; does that sound correct?

12 A. Mmm, yes.

13 Q. Okay. Walking and standing also.

14 Had you had -- it says you had physical therapy
15 before. Have you had physical therapy before?

16 A. Yes, I had.

17 Q. Okay. And said it had no change on you, is that -- said
18 it had no effect on you; is that correct?

19 A. No. I mean yes, that's correct.

20 Q. Okay. Massage therapy hadn't worked; is that right?

21 A. What's --

22 Q. Massage therapy hadn't worked for you?

23 A. No.

24 Q. Or TENS unit or any --

25 A. Really, no. It really didn't help, no.

1 Q. Okay. Said that you had some numbness and tingling down
2 your feet and hands and down your legs; is that correct?

3 A. Yes.

4 Q. It said you had an MRI of your shoulder and neck. Does
5 all that sound correct?

6 A. That I had one, yes. I did have one.

7 Q. Okay. Now you had gone through and seen him on other
8 occasions, had you not?

9 A. I didn't hear you.

10 Q. You had seen him on other occasions, had you not?

11 A. Seen who?

12 Q. Dr. Smithers.

13 It says on 4-25-16 you saw him. Do you recall that
14 day?

15 A. I don't know -- I don't remember dates. I don't remember
16 dates, I mean.

17 Q. It says you were complaining of right shoulder pain and
18 lower back pain; is that correct?

19 A. Yes.

20 Q. Does that sound about right during that time? It says
21 your pain was eight to six. Does that sound correct?

22 A. I guess, yes.

23 Q. Okay. Said you had moderate controlled pain through your
24 prescriptions. Did you report that to him that your medicines
25 were working? Did you have a moderate control of it? Is that

1 true or is it not?

2 A. Well, actually, I don't -- I think I would put 10s all
3 down through there, then I would have 10s on my pain. Then I
4 was told --

5 Q. So your pain was so bad --

6 THE COURT: Wait a minute. Wait a minute. Let him
7 finish.

8 THE WITNESS: Yeah, I think I remember I was told
9 that I have to change. I have to make it look like the
10 medicine was working.

11 BY MR. WILLIAMS:

12 Q. That was Darryl Williams told you that?

13 A. Yes, someone. No, actually, it was the doctor I believe
14 that told me we had to change those 10s. We couldn't put 10s
15 on there all the time.

16 THE COURT: The doctor you're speaking about is
17 Dr. --

18 THE WITNESS: Smithers.

19 THE COURT: He told you what now?

20 THE WITNESS: We couldn't put 10s on there all the
21 time, that we had to make it look like the medicine was
22 working.

23 THE COURT: Okay.

24 BY MR. WILLIAMS:

25 Q. Now, you had applied for your disability, had you not?

1 A. I tried, yes.

2 Q. Okay. Showed that you had a rotator cuff tear, is
3 that --

4 A. Yes.

5 Q. -- part of the shoulder injury?

6 A. What's that?

7 Q. Was that part of the same shoulder injury or was that a
8 different injury?

9 A. Yes.

10 Q. Now, did Dr. Smithers do drug testing and pills?

11 A. I think, yes. I did take one. When you would go in for
12 the -- on the -- yeah, it was pill counts and drug tests.

13 Q. Were you discharged from Dr. Smithers's care?

14 A. Was I discharged?

15 Q. Yeah.

16 A. No.

17 Q. On page 59 of the record it says that you were taking
18 OxyContin before; is that right?

19 A. I had taken it before, yes.

20 Q. Okay. OxyContin 30?

21 A. Yes.

22 Q. Okay. You'd taken OxyContin 15-milligram?

23 A. Yes.

24 Q. You had taken Opana, which is the oxymorphone ER, that's
25 extended release; is that right? Do you recall telling him

1 that?

2 A. No.

3 Q. Okay. Didn't tell him that you had been taking
4 30 milligrams, 30 to 40 milligrams?

5 A. I don't remember. Because I --

6 Q. Possible you told him that though?

7 A. Yes, it was possible, I mean.

8 Q. Had you taken that before?

9 A. Not the Opana, no.

10 Q. So that would have been a lie on what you had told him;
11 correct?

12 A. Probably, yes. That was just probably what I was told to
13 tell him, I mean.

14 Q. Now, there was some times that you hadn't seen
15 Dr. Smithers, wasn't there?

16 A. There was what?

17 Q. A period of time when you said prescriptions were mailed
18 to you, weren't they?

19 A. I'm guessing.

20 Q. Mailed to someone.

21 A. They were mailed to someone, yeah.

22 Q. Okay. You -- wasn't there some bad weather or something
23 during that time?

24 A. It was just winter time coming up and the drive where we
25 drove so far, he said that they could be mailed to you and we

1 wouldn't have to go see the doctor. You can do that so many
2 times or something like that.

3 Q. Okay. And that was mailed to you, what, a couple times
4 or something?

5 A. Two, maybe three.

6 Q. All right.

7 MR. WILLIAMS: No further questions, Your Honor.

8 THE COURT: All right. Anything further?

9 MR. JUHAN: No, Your Honor.

10 THE COURT: All right. Thank you, sir. You may
11 step down.

12 THE WITNESS: Thank you.

13 THE COURT: May this witness be excused?

14 MR. JUHAN: Yes.

15 THE COURT: You may be excused, sir.

16 MR. LEE: Your Honor, I'd ask that he be excused but
17 subject to recall.

18 THE COURT: All right. Mr. Harlow, you can leave
19 now. But it's possible that you may be called back. And if
20 you are called back, you will need to return. All right?

21 THE WITNESS: Not today, right?

22 THE COURT: Not today.

23 THE WITNESS: Okay. Thank you.

24 MR. LEE: The Government calls Shannon Kovalski.

25 THE CLERK: Please raise your right hand.

1 Do you solemnly swear that the testimony you're
2 about to give in this case shall be the truth, the whole
3 truth, and nothing but the truth, so help you God?

4 THE WITNESS: Yes.

5 THE CLERK: You may be seated.

6 **SHANNON KOVALESKI,**

7 Called as a witness herein by the Government, having been
8 first duly sworn, was examined and testified as follows:

9 **DIRECT EXAMINATION**

10 BY MR. LEE:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Ma'am, would you please introduce yourself to the members
14 of the jury.

15 A. Hi, I'm Shannon Kovalski.

16 Q. Ms. Kovalski, there's a microphone in front of you.

17 A. I'm sorry.

18 Q. If you could pull that up. There you go. It's a little
19 bit hard to hear in here.

20 A. I'm sorry.

21 Q. If you could just state your full name again.

22 A. Shannon Kovalski.

23 Q. And if you could spell your last name for the court
24 reporter.

25 A. K-o-v-a-l-e-s-k-i.

1 Q. Miss Kovalleski, from what area do you reside?

2 A. Columbus, Ohio.

3 Q. Miss Kovalleski, you have previously pleaded guilty to a
4 felony offense in this court; is that correct?

5 A. Correct.

6 MR. LEE: If I may approach, Your Honor?

7 THE COURT: You may.

8 BY MR. LEE:

9 Q. Ms. Kovalleski, I'm going to hand you what's been marked
10 as Government's Exhibit 85. If you would look through that
11 document and see if you recognize it.

12 A. Yes.

13 Q. If you could, tell the members of the jury what that is.

14 A. This is my plea agreement.

15 Q. And you've signed that agreement?

16 A. Yes.

17 MR. LEE: Your Honor, I move for the admission of
18 Government's Exhibit 85.

19 THE COURT: It will be admitted.

20 (Government's Exhibit 85 received.)

21 BY MR. LEE:

22 Q. I'm going to show you on the screen, Ms. Kovalleski, the
23 first page of your plea agreement. That indicates that you
24 entered a plea of guilty for a charge of making a false
25 declaration while under oath; is that correct?

1 A. Correct.

2 Q. In essence, you pled guilty to perjury.

3 A. Correct.

4 Q. And that was a charge related to your false testimony in
5 front of a federal grand jury about Dr. Joel Smithers; is that
6 correct?

7 A. Correct.

8 Q. And you entered your guilty plea in December of 2017,
9 does that sound --

10 A. That sounds right.

11 Q. Okay. And you have been sentenced in that case?

12 A. Yes.

13 Q. What were you sentenced to?

14 A. Ten months: Five months federal prison, five months
15 house arrest.

16 Q. And have you served that time?

17 A. Yes.

18 Q. And are you currently under supervision of the court?

19 A. Yes, for two years.

20 Q. Have you had any problems since your release while you've
21 been on supervision?

22 A. No.

23 Q. Are you expecting anything or have you been promised
24 anything for your testimony today?

25 A. No.

1 Q. Have you been promised any sort of benefit or
2 consideration by testifying or in return for testifying today?

3 A. No.

4 Q. In fact, is there anything really that this U.S.
5 Attorney's office can do for you other than maybe reduce the
6 term you're on supervision?

7 A. No, sir.

8 Q. When are you released from supervision?

9 A. Oh, gosh, I think 2021. I'm not sure which month.

10 Q. Okay. So a couple more years.

11 A. Couple more years.

12 Q. All right. Ms. Kovaleski, you said that you are from
13 Columbus, Ohio, area?

14 A. Correct.

15 Q. Okay. And you at one point in time were a patient of
16 Dr. Smithers; is that correct?

17 A. Correct.

18 MR. LEE: If I could have one moment, Your Honor.

19 BY MR. LEE:

20 Q. I may have asked this, I can't remember. You were a
21 patient of Dr. Smithers; is that correct?

22 A. Correct.

23 Q. Do you remember approximately from what timeframe you
24 were a patient of his?

25 A. I'm not sure which month. I know that it was 2016 to

1 2017. I'm just not sure of the dates.

2 Q. Okay. If your prescription records show it lasted from
3 approximately July of 2016 through June of 2017; does that
4 sound about right?

5 A. That's probably accurate, yes.

6 Q. Okay. And you were at a later time, after a search
7 warrant was executed, asked to testify about your
8 patient/doctor relationship with Dr. Smithers; correct?

9 A. Correct.

10 Q. And when you first went before the federal grand jury,
11 did you tell the truth about that?

12 A. I'm sorry, what is the question?

13 Q. I'm sorry, I asked probably a very poor question.

14 At some point you were called to testify in front of
15 a federal grand jury; is that correct?

16 A. Correct.

17 Q. And you were asked a number of questions about your
18 relationship with Dr. Smithers; why you were going to see him,
19 why you were being prescribed pain medication; correct?

20 A. Correct.

21 Q. Okay. The first time you testified, did you tell the
22 truth?

23 A. No.

24 Q. And, if you could, tell the members of the jury in
25 summary what you told the federal grand jury the first time

1 you testified.

2 A. I mean, I'm not, you know, sure exactly what I said. You
3 know, obviously, I don't want to perjure myself again. But,
4 you know, I did go there to his office to obtain a
5 prescription which I did not need.

6 Q. All right. And in that testimony did you talk about a
7 pain that you were saying you had and that's why you needed --

8 A. Correct.

9 Q. -- prescription pain medicine?

10 A. Correct.

11 Q. And all of that was false; correct?

12 A. Yes.

13 Q. So tell the members of the jury why you actually went to
14 Dr. Smithers's office.

15 A. To obtain the medications that he would prescribe.

16 Q. How did you learn about him?

17 A. My mother had -- had went to see him, had been a patient
18 of his.

19 Q. Where does your mother live?

20 A. Belfry, Kentucky.

21 Q. All right. And what is her name?

22 A. Donna Dotson.

23 Q. Was she going to see Dr. Smithers for legitimate pain or
24 for some other reason?

25 A. For some other reason. I do -- let me say that she does

1 have pain, obviously. But there was another reason too.

2 Q. What was the purpose that your mother had been going to
3 to see Dr. Smithers?

4 A. To obtain prescriptions.

5 Q. And what was she doing with the prescriptions she was
6 obtaining?

7 A. She would sell her pills.

8 Q. Do you know what kind of pills she was receiving from
9 Dr. Smithers?

10 A. I don't know.

11 Q. Were they opiates?

12 A. Yes.

13 Q. So how did you become, I guess, part of this with your
14 mother?

15 A. She just told me what she had been doing and told me that
16 I could also go, you know, with her.

17 Q. And did she tell you what benefit you would get out of
18 it?

19 A. Yes.

20 Q. Okay. What was that benefit?

21 A. That I would give, you know, the prescriptions to her and
22 she would sell the scripts.

23 Q. Okay. How much were you going to receive for the
24 prescriptions you would provide to her?

25 A. I'm not sure. I'm sure you have it in the documents.

1 I'm not sure.

2 Q. Okay. Do you remember telling agents when you were
3 interviewed it was around \$1,000 plus expenses?

4 A. Yes.

5 Q. Does that sound about accurate?

6 A. That sounds about right, yes.

7 Q. And didn't your mother also pay your rent and your phone
8 bill at that time?

9 A. Yes.

10 Q. So why did you do it?

11 A. For that benefit.

12 Q. Just for the money?

13 A. Mm-hmm.

14 Q. Okay. Is that a "yes"?

15 A. Yes.

16 Q. So tell the members of the jury how -- about your first
17 visit to Dr. Smithers's office?

18 A. What do you mean? Just how I --

19 Q. How did you get an appointment and what happened?

20 A. I mean, I called and set up an appointment. I had to
21 bring in an MRI, had to bring in documentation to show that I
22 had legitimate pain, which I did have documentation from a
23 previous surgery that I had a few years ago.

24 Q. That was actually a surgery from 2009?

25 A. That's about right, yes.

1 Q. All right. I know this may be a little sensitive to talk
2 about, but what was the purpose of that surgery in 2009?

3 A. I had a breast procedure.

4 Q. Was it breast reduction?

5 A. Breast reduction, yes.

6 Q. That was to deal with pain that you had back then;
7 correct?

8 A. Correct.

9 Q. And at the time you went to see Dr. Smithers, you didn't
10 have any pain from that, did you?

11 A. No.

12 Q. Other than that procedure from 2009 and the complaint of
13 back pain from the procedure, did you have any other
14 complaints or reasons that you told Dr. Smithers that you
15 needed pain medicine?

16 A. No.

17 Q. Did you have an exam on your first visit?

18 A. I can't recall. I'm sure that I had something. I'm sure
19 that I had my blood pressure drawn, I'm just not sure.
20 Whatever I told you is accurate, I just can't recall.

21 Q. Was there anything extensive that was done; MRIs?
22 X-Rays?

23 A. No.

24 Q. Any sort of mobility testing? Anything like that?

25 A. No.

1 Q. How long did you spend at Dr. Smithers's office the first
2 time you went?

3 A. I'm not sure. It was a few hours.

4 Q. Did Dr. Smithers have any medical staff on hand; nurses?
5 Anything like that that you can recall?

6 A. There was a gentleman there that worked in the office. I
7 cannot remember his name. Wendell, but I'm not sure his last
8 name.

9 Q. Was Wendell a nurse, do you know?

10 A. I don't think so.

11 Q. Any other staff assisting Dr. Smithers that you can
12 recall at the first visit?

13 A. No. No. I just -- honestly, I can't remember. I think
14 there was someone working the front desk. I don't know if
15 that matters, but.

16 Q. Who would that have been?

17 A. Peter Bodai.

18 Q. Peter Bodai.

19 Did you get a prescription that first day?

20 A. Yes.

21 Q. Okay. What did you do with it?

22 A. I know that I had it filled. Where I had it filled, I'm
23 not sure. I don't know if it was in Wytheville, I'm not sure
24 of the name of that town.

25 Q. Did you have the prescriptions filled yourself or did you

1 give the prescription to your mother to have her fill it?

2 A. I can't recall. I don't remember. Whatever I said to
3 you was accurate.

4 Q. Okay. I guess, if you can think about it and just for
5 the purposes of thinking about all the times that you got
6 prescriptions during that time period, can you summarize how
7 that went as far as getting your prescriptions filled? Did
8 you do it? Did your mother do it? Or did it happen both
9 ways?

10 A. It was both ways. I would, you know, have them filled or
11 I would give the prescription to her and she would fill them.

12 Q. And did you get a prescription every time you went to
13 Dr. Smithers's office?

14 A. Yes.

15 Q. How often were you going?

16 A. Once a month.

17 Q. Was Dr. Smithers present every time that you went to his
18 office?

19 A. No.

20 Q. And what would happen on those occasions?

21 A. The other gentlemen, Wendell, would write the -- I don't
22 know who wrote the prescription, obviously, but there would be
23 a prescription there.

24 Q. Okay. Do you remember testifying in front of the federal
25 grand jury the second time?

1 A. Mm-hmm.

2 Q. Is that a "yes"?

3 A. Yes. Sorry.

4 Q. And you told the truth on that occasion; is that correct?

5 A. Yes.

6 Q. Do you remember telling the grand jury that you actually
7 saw Wendell write out your prescriptions once or twice if the
8 doctor wasn't there?

9 A. If I said that, it's accurate, yes.

10 Q. I'm going to show you page 17 of your grand jury
11 testimony just for you to read to yourself to see if that
12 refreshes your recollection.

13 A. Yes.

14 Q. All right. Does that refresh your recollection?

15 A. Yes. Yes.

16 Q. As to whether or not you saw Wendell Wilson fill that
17 out?

18 A. Yes. Yes.

19 Q. Okay. What do you recall now?

20 A. I'm sorry.

21 Q. What do you remember after having read your grand jury
22 transcript?

23 A. Just that he wrote out the prescriptions.

24 Q. Did it happen more than once?

25 A. Yes.

1 Q. Now, at some point during your time at Dr. Smithers's --
2 going to Dr. Smithers's office, did you develop a relationship
3 with Peter Bodai who worked there?

4 A. Yes.

5 Q. Was that a sexual relationship?

6 A. Yes.

7 Q. And, if you would, why did you enter into that
8 relationship with Mr. Bodai?

9 A. I did not take the prescription medication. I don't -- I
10 don't know.

11 Q. Did you think it would help you get information about
12 when you were going to be drug tested?

13 A. Yes.

14 Q. Did it?

15 A. Yes.

16 Q. Do you remember what types of medicine that Dr. Smithers
17 was writing prescriptions for you?

18 A. I don't recall.

19 Q. Okay.

20 A. Really, I'm sorry.

21 Q. Did Dr. Smithers keep normal business hours when you went
22 to see him? Or what were the hours he was open?

23 A. I'm not sure. I mean, I would be there sometimes all
24 day. I'm just, I'm not -- I don't know what his hours --

25 Q. Were you ever there late into the night?

1 A. Until like maybe 5:00 or 6:00. I don't know. I can't
2 remember. You know, this has been over a year, I can't
3 remember everything. I'm sorry.

4 Q. Okay. I'm going to direct your attention to some of the
5 things that were in your patient file.

6 MR. LEE: Ms. Vogt, if you can bring up SK-114.

7 BY MR. LEE:

8 Q. This has been introduced into evidence through your
9 patient file already.

10 A. Okay.

11 MR. LEE: Let's use the ELMO at this point.

12 Do it the old-fashioned way.

13 BY MR. LEE:

14 Q. Showing you page 14 of your patient file, is that a copy
15 of your driver's license?

16 A. Yes.

17 Q. Okay. And it lists your address as being in New Albany,
18 Ohio; is that correct?

19 A. Correct.

20 Q. How far of a drive was it for you to go from New Albany,
21 Ohio, to Martinsville, Virginia?

22 A. Maybe six hours. Six, six and a half hours.

23 Q. Okay. And I think there's a blow up of Government's
24 Exhibit 50, which is our map. Does that indicate just above
25 Columbus where New Albany is?

1 A. Yes.

2 Q. And then all the way to this the lower, right-hand corner
3 is where Martinsville is?

4 A. Yes.

5 Q. Did Dr. Smithers ever ask you why you would drive
6 six-plus hours from north of Columbus, Ohio, to see him in
7 Martinsville?

8 A. No.

9 Q. I'm going to show you page 19 of your patient file. Do
10 you remember what that document was? This was a contract that
11 you had with Dr. Smithers regarding opioid treatment and
12 maintenance.

13 A. Yes.

14 Q. Okay. And it lists where you're supposed to fill all of
15 your prescriptions, doesn't it?

16 A. Yes.

17 Q. At a pharmacy in Pikeville, Kentucky?

18 A. Correct.

19 Q. Did Dr. Smithers ever ask you why if you lived in
20 Columbus, Ohio, you would be filling your prescriptions in
21 Pikeville, Kentucky?

22 A. No.

23 Q. Where were you filling your prescriptions, if you know?

24 A. I know that one pharmacy was in -- excuse me, I don't
25 know the name of the town. I think its Wytheville. I'm not

1 sure. There. And then there was a -- there was two other
2 pharmacies. Actually, maybe three. I think I filled them,
3 too, in Ohio maybe once or twice.

4 Q. Okay. I want to show you page 64 of your file. This is
5 a checklist of long-term opioid therapy. Can you see if
6 there's any patient name listed there?

7 A. No.

8 Q. In fact, other than what's pre-printed on this form,
9 everything is blank, isn't it?

10 A. Correct.

11 Q. And did Dr. Smithers go through any of this stuff with
12 you? For example, a periodic review of your goals or accurate
13 and complete medical history and records? Or anything like
14 that?

15 A. I don't recall.

16 Q. Now, during the time that you were seeing Dr. Smithers,
17 again, did you have any legitimate medical reason to get the
18 prescriptions he was writing you?

19 A. No.

20 Q. Did you ask for him to change your medication or increase
21 the strength, or anything of that nature?

22 A. I may have. I'm not sure. But I'm sure I did.

23 Q. Okay. Why would you have done that?

24 A. Just to have a higher dosage of the medication.

25 Q. And what was the purpose of doing that?

1 A. I don't know. Just my mom told me to do that, so I'm not
2 sure.

3 Q. Okay. So your mom told you what prescriptions you should
4 try to get. You told the doctor, and he wrote them; is that
5 fair to say?

6 A. Well, I mean, he didn't write them if I said that. I
7 would tell him, you know, that I would -- you know, like to
8 have, you know, this, you know, whatever it was. Honestly, I
9 can't remember, but I'm sure I did.

10 Q. And he would write you the prescription you asked for;
11 right?

12 A. No, not each time. I mean, I don't -- it just depends.

13 Q. Okay. Well, your first prescription SK-478, started you
14 out with Dilaudid, four milligrams; correct?

15 A. Correct.

16 Q. And 479, MS Contin, 15; correct?

17 A. Correct.

18 Q. Then in September, you go up to MS Contin, 30; correct?

19 A. Correct.

20 Q. Then in October you go to oxymorphone, five; correct?

21 A. Correct.

22 Q. Then in November you go to oxymorphone, 10s; correct?

23 A. Correct.

24 Q. I mean, is there a pattern here?

25 A. Looks that way.

1 Q. What's the pattern?

2 A. The higher dosage.

3 Q. Almost every time you go.

4 A. Every time.

5 Q. Then in March, you're up to oxymorphone, 15s; correct?

6 A. Correct.

7 Q. And you stopped going to Dr. Smithers in June 2017.

8 A. That sounds about right.

9 Q. Approximately.

10 A. I think so.

11 Q. If your last prescription was in July --

12 A. Okay.

13 Q. -- is that --

14 A. If you say it is, it is.

15 Q. I'll show you SK-500.

16 A. Okay.

17 Q. Which is a prescription of oxymorphone, 15, in July.

18 A. Okay.

19 MR. LEE: If I could have one moment, Your Honor.

20 BY MR. LEE:

21 Q. You mentioned that you went to a pharmacy in Wytheville;
22 is that correct?

23 A. Yes.

24 Q. Was that Mike's Best Practice?

25 A. Yes.

1 Q. Why did you end up going to that pharmacy?

2 A. I feel like -- I think, I don't know exactly, my memory
3 is kind of vague right now, but I think that it was -- I think
4 in Dr. Smithers's office there was a pamphlet maybe that
5 showed like a prescription card maybe. I can't remember
6 exactly.

7 THE COURT: Do you mean that these were
8 recommendations of pharmacies --

9 THE WITNESS: Correct.

10 THE COURT: -- for you to go to?

11 THE WITNESS: Yes, sir.

12 THE COURT: And do you know the basis of why these
13 particular pharmacies were recommended by the doctor?

14 THE WITNESS: I think there was a discount card.
15 And I think that's -- there was a discount card in the
16 pamphlet.

17 THE COURT: A discount card?

18 THE WITNESS: I'm pretty sure. I'm not 100 percent,
19 but I do think so.

20 THE COURT: Okay.

21 BY MR. LEE:

22 Q. Would it refresh your recollection if you had an
23 opportunity to read your grand jury transcript?

24 A. Yes.

25 Q. Page 11. Does that refresh your recollection?

1 A. Yes.

2 Q. How did you find out about Mike's Best Practice Pharmacy?

3 A. Dr. Smithers with the pamphlet in his office, and also my
4 mother.

5 Q. Ms. Kovaleski, when you first testified under oath in
6 front of the grand jury and gave false testimony, why did you
7 do that?

8 A. To protect my mother.

9 Q. And to protect yourself?

10 A. And to protect myself.

11 Q. And it's fair to say, again, everything you've testified
12 to during that appearance saying that your visits to
13 Dr. Smithers were legitimate, that was false, wasn't it?

14 A. Correct.

15 MR. LEE: No further questions.

16 Please answer any questions defense counsel may
17 have.

18 THE COURT: All right. Cross-examination?

19 **CROSS-EXAMINATION**

20 BY MR. WILLIAMS:

21 Q. Ms. Kovaleski, you've indicated earlier that you had
22 entered into a sexual relationship with Peter Bodai; is that
23 correct?

24 A. Correct.

25 Q. Okay. And, obviously, you-all kept that from

1 Dr. Smithers; correct?

2 A. Correct.

3 Q. Okay. And because you knew you would be dismissed from
4 the program if he found out about that; correct?

5 A. Correct.

6 Q. Now, did -- I think you said you were seeing Peter
7 because you were wanting to make sure that you could try to
8 beat the drug screens; correct?

9 A. Correct.

10 Q. So you were having drug screens, you were having pill
11 count all that time whenever you went in? At various times?

12 A. Yes.

13 Q. Okay. And I think you were on a low risk because you
14 hadn't failed anything; correct?

15 A. Correct.

16 Q. Because you knew when the tests were coming, didn't you?

17 A. Yes.

18 Q. Okay. Now, I think you stated before that you lied to
19 the grand jury --

20 A. Yes.

21 Q. -- on multiple occasions.

22 You told them that you weren't selling your pills --
23 or you weren't giving your mom your pills. That was a lie;
24 right?

25 A. Correct.

1 Q. And you told them that you were taking the pills, didn't
2 you?

3 A. Correct.

4 Q. And that was a lie?

5 A. Correct.

6 Q. Okay. Now, I think you -- do you recall signing -- I
7 think that counsel showed you the opioid agreement. Do you
8 recall signing that? The Opioid Maintenance Agreement where
9 he was showing you about where you agreed to go to a certain
10 pharmacy?

11 A. Yes.

12 Q. Okay. Did you read that agreement when you signed it?

13 A. I may not have. I may have skimmed through it. I'm not
14 sure, that was two years ago.

15 Q. Anybody go over it with you?

16 A. I'm not sure if he went over everything.

17 Q. Okay. Do you recall under that that you may not give or
18 sell your medications to any other person under any
19 circumstance? If you do, you could endanger that person's
20 health and it's against the law. Do you recall that provision
21 being in there?

22 A. I don't recall. I'm sure it is. I'm aware of that.

23 Q. So you would agree that you violated that provision?

24 A. Correct.

25 Q. Okay. You didn't tell Dr. Smithers any of that, did you?

1 A. No.

2 Q. Okay. In fact, you didn't tell the grand jury about that
3 the first time; correct?

4 A. Correct.

5 Q. Now, you also signed under paragraph 10 stating that you
6 agreed to be truthful and cooperative with him. And you
7 agreed to tell him because that's the only way a
8 physician-patient relationship --

9 THE COURT: Well, you can't testify, sir.

10 MR. WILLIAMS: Okay. I'm sorry.

11 THE COURT: Just ask the questions.

12 BY MR. WILLIAMS:

13 Q. Do you recall it stated you will communicate fully to
14 your physician to the best of your ability at the initial and
15 follow-up visits for your pain functional activity level along
16 with any side effects of the medication? This information
17 allows your patient (sic) to adjust your treatment plan
18 accordingly. Did you read that part of it?

19 A. I'm sure I read it, I just don't recall.

20 Q. Okay. But you weren't following that; right?

21 A. Correct.

22 Q. You weren't being honest with him.

23 Now, I think when you initially went to see him that
24 was in July of 2016; is that correct?

25 A. Yes.

1 Q. And you reported that you had back and knee pain?

2 A. I know that I said back pain for sure. I'm not sure of
3 the other pain.

4 Q. You said it radiates into the shoulders and the back; is
5 that correct?

6 A. Sounds right.

7 Q. Okay. And did you provide an MRI back, of your back in
8 2015? Do you recall providing an MRI of that?

9 A. I don't. I don't recall.

10 Q. Okay. What about an X-ray in 2015?

11 A. I don't recall. If it's there, then I did.

12 Q. Okay. And you stated that it hurt to lift, stand, bend?

13 A. Correct.

14 Q. Those types of things.

15 Okay. You said you had numbness and balance
16 problems; is that right?

17 A. Is that what I said? Is there writing, documentation
18 there that I said that?

19 Q. That's what's checked on the form.

20 A. Okay. Because I don't recall two years ago. I'm sorry.

21 Q. Okay. All right.

22 Had you taken oxycodone before?

23 A. Have I ever taken one?

24 Q. Had you taken prior -- at that time that you were in the
25 visit with Dr. Smithers on July 28th, had you taken oxycodone

1 before?

2 A. I mean, I don't know -- I don't know.

3 Q. July --

4 A. Did I have a drug test that day?

5 Q. July 28th of 2016, your initial visit, did you tell him
6 you had previously taken oxycodone before?

7 A. I don't remember. I don't recall.

8 Q. So if it was documented, you think you probably told him
9 that?

10 A. Yes.

11 Q. Okay. So his basis of your pain would have been on the
12 fact that you had been on oxycodone before?

13 A. Correct.

14 Q. Do you have any other criminal history other than the
15 perjury charge?

16 A. Yes.

17 Q. What is your criminal history?

18 A. A disorderly conduct and a criminal damaging through a
19 divorce.

20 THE COURT: Have you ever been convicted of a
21 felony?

22 THE WITNESS: No.

23 THE COURT: Or a crime of deceit? Lying?

24 THE WITNESS: No.

25 THE COURT: Other than the one --

1 THE WITNESS: Right. Exactly. No. No, sir.

2 BY MR. WILLIAMS:

3 Q. But you were showing that you had severe chronic pain.

4 That's what you told him, wasn't it?

5 A. Yes.

6 Q. Okay.

7 MR. WILLIAMS: No further questions, Your Honor.

8 THE COURT: All right. Any further questions?

9 MR. LEE: No, Your Honor.

10 THE COURT: All right. Thank you, ma'am.

11 THE WITNESS: Thank you.

12 MR. LEE: May this witness be excused?

13 THE COURT: All right. Without objection you may
14 leave. You may be excused.

15 THE WITNESS: Thank you.

16 THE COURT: All right. Ladies and gentlemen, we're
17 going to take a break at this time. So if you'll follow the
18 bailiff out, please.

19 (Proceedings held in the absence of the jury.)

20 THE COURT: All right. Is there anything that we
21 need to take up?

22 If not, then we'll be in recess.

23 I have a sentencing matter I need to take up, so it
24 may be a little longer than usual.

25 MR. WILLIAMS: Your Honor, do we need to move these

1 documents out of the way.

2 THE COURT: No. You might just push them forward a
3 little bit. If there's anything you don't -- want to keep
4 confidential, obviously, you need to cover it up.

5 All right. We'll be in recess.

6 (Proceedings suspended at 2:28 p.m. and resumed at 3:27
7 p.m.)

8 THE COURT: Are we ready for the jury?

9 MR. RAMSEYER: Yes, Your Honor.

10 THE COURT: All right. We'll have the jury in.

11 Mr. Juhan, just one little tip here, I don't think
12 you need to ask the witnesses their exact address, unless it's
13 necessary for the case, because otherwise when the transcript
14 is prepared, it has to be redacted. And that just causes a
15 little more problems. The city and state is enough.

16 MR. JUHAN: Thank you, Your Honor.

17 (Proceedings held in the presence of the jury.)

18 THE COURT: Ladies and gentlemen, we're ready to go
19 again.

20 Let me explain why you were in the jury room so
21 long. I had another matter unconnected to this case that I
22 had to take up. So it's not the fault of anyone here, it's
23 just I had another matter I had to take up.

24 Also, if those of you at the end of the jury box, if
25 you want to come in front, I'm sure the Government's computer

1 operator there will be glad to move so that you can get by,
2 that way you don't have to crawl over each other in getting to
3 the end.

4 All right. So you may call your next witness.

5 MR. RAMSEYER: The Government calls Deborah
6 Reynolds.

7 THE CLERK: Please raise your right hand.

8 Do you solemnly swear that the testimony you're
9 about to give in this case shall be the truth, the whole
10 truth, and nothing but the truth, so help you God?

11 THE WITNESS: Yes.

12 THE CLERK: You may be seated.

13 **DEBORAH REYNOLDS,**

14 Called as a witness herein by the Government, having been
15 first duly sworn, was examined and testified as follows:

16 **DIRECT EXAMINATION**

17 BY MR. RAMSEYER:

18 Q. Ma'am, please state your name.

19 A. Deborah Reynolds.

20 THE COURT: Ms. Reynolds, you're going to have to
21 speak up.

22 THE WITNESS: Okay.

23 THE COURT: If you'll get close to that and speak
24 directly into that microphone.

25 THE WITNESS: Okay. Deborah Reynolds.

1 MR. RAMSEYER: Your Honor, one thing I forgot to
2 bring up with the Court. We would ask that the prescriptions
3 of the patient files be kept under seal. I should have
4 mentioned that because they have patient-identifying
5 information in those, both of those things, the files and the
6 prescriptions.

7 THE COURT: All right. Well, I'm going to discuss
8 with counsel when we finish about the custody of the exhibits
9 until the trial is concluded, so we'll talk about that.

10 MR. RAMSEYER: Thank you, Your Honor.

11 BY MR. RAMSEYER:

12 Q. I'm sorry, ma'am. Your name is Deborah Reynolds; is that
13 correct?

14 A. Yes.

15 Q. What city and state do you live in?

16 A. Pikeville, Kentucky.

17 Q. Pikeville, P-i-k-e?

18 A. Yes.

19 Q. All right. And, ma'am, have you ever seen Dr. Smithers
20 here as a patient?

21 A. No.

22 Q. Do you know a Darryl Williams?

23 A. Yes.

24 Q. And how do you know Darryl Williams?

25 A. That is my ex-husband.

1 Q. How long ago did he become your ex-husband? Or what year
2 did he become your ex-husband? Let me ask it that way.

3 A. It's been 16, 17 years ago, or longer.

4 Q. Okay.

5 A. I'm not --

6 Q. Okay. So somewhere in maybe 2000, 2005, somewhere in
7 there?

8 A. We -- we separated -- 16, 17 years ago, then we were
9 divorced maybe a year later. I'm not sure exactly what year
10 it was.

11 MR. RAMSEYER: Okay. If we could show DR-717,
12 please, it's been previously admitted.

13 BY MR. RAMSEYER:

14 Q. All right. Do you see there on the screen exhibit
15 DR-717? Do you see it, ma'am?

16 A. Mm-hmm.

17 Q. Is that a "yes"?

18 THE COURT: If you'll answer "yes" or "no".

19 THE WITNESS: Yes.

20 BY MR. RAMSEYER:

21 Q. Up here it's got some information. It's got Deborah E.
22 Reynolds; is that your name? It's got your date of birth, I'm
23 not going to read it out loud, but is that your date of birth?

24 A. Yes.

25 Wait a minute.

1 Q. I'm sorry?

2 A. You marked over it.

3 Yes.

4 Q. All right. So this is a prescription from Dr. Smithers
5 in your name for, if you look down here, 90 oxycodone pills
6 dated October 15th of 2015. Did you ever get that?

7 A. No.

8 Q. Did you ever go to the doctor to ask for this or --

9 A. No.

10 MR. RAMSEYER: All right. If you'd go to the next
11 exhibit, DR-718.

12 BY MR. RAMSEYER:

13 Q. All right. Same thing. Is that you? In terms of the
14 patient name, the date of birth, is that your information?

15 A. Yes.

16 Q. And it's dated October 15th of 2015. It's for
17 oxymorphone, 90 pills. Same question. Did you go to the
18 doctor to get that?

19 A. No.

20 Q. Did you see the doctor to get this prescription?

21 A. No.

22 MR. RAMSEYER: We can go to 719, please.

23 BY MR. RAMSEYER:

24 Q. This is November 23rd, 2015. Again, is that your
25 identifying information as the patient?

1 A. Yes.

2 Q. And it's for 60 oxycodone pills as needed for
3 breakthrough pain. Did you go to the doctor's office to get
4 that?

5 A. No.

6 Q. Did you fill these prescriptions?

7 A. No.

8 MR. RAMSEYER: If we could go to DR-720, please.

9 BY MR. RAMSEYER:

10 Q. This is another prescription for November 23rd. Again,
11 is that your name?

12 A. Yes.

13 Q. And it's for 90 oxymorphone pills. Again, did you go to
14 the doctor's office to get this?

15 A. No.

16 Q. And did you fill that?

17 A. No.

18 MR. RAMSEYER: If we can go to DR-721.

19 BY MR. RAMSEYER:

20 Q. It says, "January 6 of 2016." Again, is that your
21 identifying information?

22 A. Yes.

23 Q. And it's for 45 oxycodone 20 milligram. Did you see the
24 doctor to get that?

25 A. No.

1 Q. And did you fill it?

2 A. No.

3 MR. RAMSEYER: Go to DR-722.

4 BY MR. RAMSEYER:

5 Q. It says, "For: Oxymorphone, 40 milligrams, 60 pills."

6 Is that your identifying information there?

7 A. Yes.

8 Q. And did you go to the doctor to get this?

9 A. No.

10 Q. And did you fill it?

11 A. No.

12 MR. RAMSEYER: DR-723.

13 BY MR. RAMSEYER:

14 Q. It's February 3rd of 2016. It says, "Earliest fill date
15 February 28th of 2016." Do you see that up here?

16 A. Mm-hmm.

17 Q. Did you go to the doctor to get that prescription?

18 A. No.

19 Q. And did you fill it?

20 A. No.

21 Q. That's for oxycodone, 20 milligrams, 30 tablets; correct?

22 Is that what you said?

23 I need you to answer out loud. Can you see it?

24 A. I see it, yes.

25 MR. RAMSEYER: Okay. If we can go to DR-724.

1 BY MR. RAMSEYER:

2 Q. This is February 3rd of 2016. Again, for Deborah
3 Reynolds. Do you see that?

4 A. I don't see my name.

5 Q. Right here.

6 A. Oh, okay. Yeah. I see it now.

7 Q. Okay. And it's February 3rd, 2016. It's for 60
8 oxymorphone tablets, 40 milligrams. Did you see the doctor to
9 get those?

10 A. No.

11 Q. And did you fill them?

12 A. No.

13 Q. So that's prescriptions in October, November, January,
14 and February.

15 Now, have you ever been to Smithers Healthcare in
16 Martinsville?

17 A. No.

18 Q. Have you ever been to Martinsville, Virginia?

19 A. No, I don't think so.

20 Q. All right. Now I want to show you what we marked as
21 Exhibit DR. And these are some records found in
22 Dr. Smithers's office. And I'd just ask, as you look at that,
23 on page 1 of the exhibit, was that your address back in '15?

24 A. Yes.

25 MR. RAMSEYER: Okay. And if we could go to the next

1 page, please.

2 If we could go to the next page, please. Page 3.

3 Next page, page 4.

4 Actually, can we go back to 3, please.

5 Blow that up, please.

6 BY MR. RAMSEYER:

7 Q. So this is a handwritten note. It says, "Rachel Miller,
8 Pam Harlow, Deborah Reynolds, dollars owed, DW-300, DR-450,
9 RM-300, PH-300." Did you go to the doctor's office --

10 A. No.

11 Q. -- on October 15th? And did you owe any money as far as
12 you knew?

13 A. No.

14 MR. RAMSEYER: Okay. Next page, please.

15 BY MR. RAMSEYER:

16 Q. Okay. And that's the prescription. We've already gone
17 through one of them. DR-5, another prescription. DR-6,
18 another prescription. DR-7, prescription. DR-8, another
19 prescription. DR-9, another prescription. Ten is another
20 prescription, 11 is a prescription, and 12 is a prescription.

21 MR. RAMSEYER: All right. Now, if we go to DR-2,
22 which is the other files found. If we can go to page 2 of
23 that, please.

24 All right. Prescription. Go on. You can just
25 scroll through that, that's page 3, page 4, page 5, page 6,

1 page 7, page 8, page 9, page 10.

2 BY MR. RAMSEYER:

3 Q. All right. That first page where it's got that, "request
4 for information from BACTES," do you know where that came
5 from?

6 A. I probably requested my information, if that's for me.

7 Q. Well, it's from BACTES Security Compliance Trust dated
8 September 14, 2015. It's addressed to you. Do you know how
9 that got in Dr. Smithers's office is what I'm asking?

10 A. My ex-husband has a copy of my license and this because I
11 did have a car accident, and I did need to see a doctor at one
12 time. And he told me he knew a good doctor, and I give him
13 this. But I never went to a doctor. And, I mean, after
14 that -- I mean, I never went to a doctor period, so, I mean.

15 Q. Right. Had you ever gone to Dr. Smithers, the gentleman
16 that's sitting over here?

17 A. No. No. And, I mean, I just thought he threw this away.
18 He never gave it back to me.

19 Q. You're talking about Darryl? You're talking about Darryl
20 Williams?

21 A. Yes.

22 MR. RAMSEYER: Can I have a moment, Your Honor?

23 Thank you, ma'am. That's all my questions.

24 THE COURT: All right. Cross-examination?

25 ///

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Ms. Reynolds, have you ever spoken to Dr. Smithers on the phone?

A. Not that I know of. I mean --

Q. Okay. You don't recall a conversation maybe on November 23rd of 2015 where you might have spoke with him for about 40 minutes on the phone relating some information?

A. I told the marshals when they came into my house there was a phone call where a gentleman called me and said that he was a doctor, he wanted me to invest in a pharmacy.

Q. Okay.

A. And before I could stop him, he went on maybe five minutes into a sales pitch. And then I -- when he stopped, I said no, I wouldn't be interested in it. You know, my husband has people to invest. And, you know, I don't have anything to invest.

Q. Your phone number, is it still area code 606-422-8680?

A. Yes. Yes, it is.

Q. Did you -- does anybody else have your phone or anything? You keep it on you all the time?

A. No, I keep it on me.

THE COURT: Is that a cell phone?

THE WITNESS: That's a cell phone.

///

1 BY MR. WILLIAMS:

2 Q. Do you recall texting Dr. Smithers anything about an
3 appointment or setting up an appointment?

4 A. I don't recall, but I don't think I did. I mean, I don't
5 recall. I remember someone calling me wanting me to invest.
6 But, no. No, I don't.

7 Q. Okay. There was a text message on Dr. Smithers's phone
8 on 3-15-16 that was from area code 606-422-8680 --

9 A. That is my number.

10 Q. -- and said, Deborah Reynolds said, "I think I need to
11 schedule an appointment and come see you." Would that be you?

12 A. I did give my husband my information and I was going to
13 see a doctor, but I never seen him, okay.

14 Q. Do you agree --

15 THE COURT: Wait. Wait. Wait. You can't both talk
16 at the same time.

17 THE WITNESS: If that was on there, I was looking
18 for a doctor, I could have done that, but I don't remember.
19 It's been so long. But I -- if I scheduled an appointment, I
20 did not see him. I did not follow through with it.

21 BY MR. WILLIAMS:

22 Q. Okay.

23 A. Okay.

24 Q. But you do agree that you probably had contact with him?

25 A. I could have --

1 Q. Okay.

2 A. -- scheduled an appointment because, I mean, I --

3 Q. Okay. But you don't recall a 40-minute conversation
4 where you told him you needed medication or anything --

5 A. No.

6 Q. -- in November of--

7 A. I never talked to anyone and told them I needed
8 medication on the phone.

9 Q. Okay. You didn't say anything about an emergency --

10 A. No.

11 Q. -- or anything to that respect?

12 A. No, I did not.

13 Q. You gave your records and your MRIs to Darryl; is that
14 correct?

15 A. I had a disk with my medical records and my license, and
16 he was going to schedule me an appointment. But I never,
17 never kept no appointment.

18 Q. Okay. Where you didn't recall having the text messages,
19 is it entirely possible you don't recall the phone
20 conversation?

21 A. If I would have talked to someone about my medical
22 condition on the phone, I would have remembered that, yes. I
23 did not.

24 Q. You didn't talk to him about having chronic pain --

25 A. No.

1 Q. -- or past surgeries or any kind of medical history or
2 anything?

3 A. (Shakes head.) No, I would never talk to anyone over the
4 phone about that. I would have -- if I would have wanted to
5 seen him, I would have scheduled an appointment. And I could
6 have scheduled an appointment, I don't remember. But I never
7 followed up with an appointment.

8 THE COURT: Well, how would you have known about
9 Dr. Smithers in order to get -- schedule an appointment?

10 THE WITNESS: My ex-husband told me he knew a doctor
11 that would see me if I needed a doctor, and I gave him my
12 information, and he was going to schedule me an appointment.
13 But I never kept my appointment.

14 BY MR. WILLIAMS:

15 Q. And you never spoke with him at any point in time?

16 A. I could have spoke to him on the phone. But I did not
17 speak to him about any of my illnesses. I did not do that. I
18 could have spoke to him, maybe trying to schedule an
19 appointment -- no, I didn't speak to him on the phone about an
20 appointment. I spoke to someone about they wanted me to
21 invest in a pharmacy. But I never spoke to no one about any
22 illnesses I had.

23 Q. And you're 100 percent certain of that?

24 A. I am, yeah. I never spoke to no doctor on the phone
25 about my illnesses.

1 Q. Okay. Never talked to Dr. Smithers on November 23rd?

2 A. I could have talked to him. But, I mean, I talked to a
3 doctor about investing, not about any medical, no.

4 MR. WILLIAMS: May I have just a moment, Judge?

5 THE WITNESS: No. I'm not -- hmm-hmm.

6 BY MR. WILLIAMS:

7 Q. You were going to seek -- to find a doctor; is that
8 correct?

9 A. I needed a doctor, yes.

10 Q. And what was that condition for?

11 A. I had a car accident.

12 Q. Car accident. And that was in when?

13 A. I don't remember. It's been a while.

14 Q. Okay. Back before 2010 or...

15 A. I don't remember.

16 Q. You don't remember. Okay.

17 And what were you looking to see a doctor for?

18 A. I had injections that I would take in my neck.

19 Q. Okay. And was that from the motor vehicle accident?

20 A. Mm-hmm.

21 Q. Okay. And the injections had not worked; is that
22 correct?

23 A. No, they did work.

24 Q. They did work? Okay.

25 A. Mm-hmm.

1 Q. If they were working, why were you seeing -- trying to
2 find another doctor?

3 A. The doctor where I went was closing.

4 Q. Okay. Well, now, do you have chronic, either neck or
5 back pain? Do you suffer from anything --

6 A. I don't know. I'm healed now pretty much. I use warm
7 compresses and cold, back and forth. But, I mean, I struggle
8 daily, but, I mean, I don't take no medicine or nothing. I
9 don't have any injections anymore.

10 Q. Okay. And you're certain you did not speak with
11 Dr. Smithers about --

12 MR. RAMSEYER: Your Honor, this has been asked and
13 answered a few times.

14 THE COURT: Yes, sir. I think we've exhausted that
15 question.

16 MR. WILLIAMS: No further questions.

17 THE COURT: Anything further?

18 MR. RAMSEYER: No, Your Honor.

19 THE COURT: All right. Thank you, ma'am.

20 You may step down.

21 May this witness be excused?

22 MR. RAMSEYER: Your Honor, we ask that she be
23 subject to recall. But she may.

24 THE COURT: Ma'am, you may leave today. It may be
25 possible for you to come back. And if so, you must come back.

1 All right. Thank you.

2 You may call your next witness.

3 MR. JUHAN: Your Honor, the Government calls Sharon
4 Mullins.

5 THE CLERK: Please raise your right hand.

6 Do you solemnly swear that the testimony you're
7 about to give in this case shall be the truth, the whole
8 truth, and nothing but the truth, so help you God?

9 THE WITNESS: Yes.

10 THE CLERK: You may be seated.

11 **SHARON MULLINS,**

12 Called as a witness herein by the Government, having been
13 first duly sworn, was examined and testified as follows:

14 **DIRECT EXAMINATION**

15 BY MR. JUHAN:

16 Q. Hi, ma'am. Would you please tell the jury your full
17 name.

18 A. Sharon Lynn Mullins.

19 Q. Can you spell Lynn for us, please.

20 A. L-y-n-n.

21 Q. And did your last name used to be Hagerman?

22 A. Yes.

23 Q. Whenabouts did you change -- your name change from
24 Hagerman to Mullins?

25 A. It's been about three years, I guess.

1 THE COURT: Ma'am, I wonder if you'd scoot up and
2 speak into the microphone, just make sure we can all hear you.

3 THE WITNESS: It's been about three years.

4 BY MR. JUHAN:

5 Q. And do you live in Mount Sterling?

6 A. All my life, mostly, yeah.

7 Q. And did you used to go visit Dr. Joel Smithers?

8 A. I did, about four times, I believe.

9 Q. And were some of those times in Martinsville, Virginia?

10 A. I believe so, yes.

11 Q. And would you tell the jury how long a drive it is from
12 Mount Sterling Kentucky to Martinsville, Virginia?

13 A. About four hours, I guess. Maybe a little more. I don't
14 remember exactly.

15 Q. Not a short trip?

16 A. No. No.

17 Q. And the time -- you mentioned you saw Dr. Smithers about
18 four times. Would this have been about 2015, 2016?

19 A. Yeah, somewhere right in there.

20 Q. How did you get hooked up with Dr. Smithers?

21 A. Through Jessie.

22 Q. And tell us a little bit about how or why that happened?

23 A. Rick -- I mean, I was actually -- I had known Rick and
24 Becky for a while, about seven years. And at that time I had
25 been seeing another doctor and the pains and pain medication,

1 at the time I was going through some stuff, back, a lot of
2 things, and Rick and Becky had told me about him and offered
3 to take me up there.

4 Q. So I'd like to discuss a little bit each of your trips to
5 see Dr. Smithers. So you mentioned four times. Would you
6 go -- how many times would you go with someone else, if you
7 remember?

8 A. About, like I said, I only went, like, four times. I
9 think two -- two of those trips, two or three of them was with
10 Rick. And one, another just friend of mine took me on the
11 last visit.

12 Q. So I want to focus on the times you went with Rick
13 Jessie?

14 A. Mm-hmm.

15 Q. How did that work. Did you go together or follow in
16 separate cars?

17 A. No, I went together. I rode with him and Becky.

18 Q. Was there anyone else beside you, Rick, Becca Jessie
19 inside the car?

20 A. I don't understand. To the best of my knowledge I don't
21 think at that time anybody else was with us.

22 Q. And just for the jury's benefit, can you explain what the
23 relationship between Rick and Rebecca Jessie is?

24 A. For me?

25 Q. No. How are they related?

1 A. Oh, they're husband and wife.

2 Q. Okay. Thank you. So why did you go with Rick Jessie?

3 A. I don't really know. I mean, it was just -- it was
4 convenient for me at the time to obtain the medicine that I
5 needed. That's what it was, basically I came back with was
6 just enough to take care of my issues.

7 Q. And you and Rick Jessie had an arrangement as part of
8 this trip down there, didn't you?

9 A. It was -- yeah, that was Rick's -- that was Rick's deal
10 to go.

11 Q. Okay. So can you tell the jury what that arrangement
12 was?

13 A. He obtained 60 percent of my prescription.

14 Q. So the pills were basically payment for ferrying you down
15 to Martinsville and back?

16 A. Yeah, he obtained over half of them.

17 Q. And when you went and saw Dr. Smithers, who paid for
18 those visits?

19 A. Rick.

20 Q. Do you remember how much he paid?

21 A. It was either 3 or 400.

22 Q. Per visit?

23 A. Yes.

24 Q. So that's 6 to \$800 for the two visits, just with Rick?

25 A. Mm-hmm.

1 Q. So you mentioned you got the pills. Who paid for the
2 pills?

3 A. Rick.

4 Q. How much did he pay for those?

5 A. I don't remember exactly. A few hundred -- couple
6 hundred dollars maybe. I don't really exactly remember what
7 pharmacy we went to. It was not in Martinsville, it was
8 outside of Martinsville somewhere. It was an odd named little
9 town.

10 Q. Do you know if anyone else had this same kind of deal
11 that you and Mr. Jessie had?

12 A. Yes.

13 Q. Do you remember who those people would have been?

14 A. Jane Craycraft would have been one that I knew of.
15 Woody. He was up here last September. His name is Woody, and
16 his wife, I can't remember her name, Candy George.

17 Q. Okay. So I want to refocus back on the transaction
18 between you and Mr. Jessie. Can you just walk the jury
19 through once you got the prescription, how would the actual
20 physical exchange happen between --

21 A. He would wait until we got back to his home where he
22 would sit at the kitchen table and count his part out and that
23 was it.

24 Q. Was there anybody else there at their kitchen -- at
25 Mr. Jessie's kitchen table?

1 A. Mm-hmm.

2 Q. Who was it?

3 A. His wife, his son, sometimes there was -- there would be
4 people that they knew that I didn't that would maybe show up
5 or be there and that I didn't know.

6 Q. Now I'm not trying to embarrass you with this question,
7 but I just need to know. Have you a prior conviction for
8 selling Lortabs; correct?

9 A. 12 years ago, yes. About 12 years ago. Five, five
10 milligrams. I was a single mother at the time. I had to
11 pay -- I was actually an office manager at a temporary service
12 and it was court reporting. And then, yeah, that's the only
13 time I been in any kind of trouble.

14 Q. I just want to make clear. You said five of them. Are
15 you referring to five pills or five convictions?

16 A. No, five milligram pills. \$20 charge.

17 Q. All right. One conviction.

18 All right. How many drug tests, if any, did
19 Dr. Smithers ever give you at his office? Or did you give?

20 A. None.

21 Q. None.

22 All right. So let's talk about the time or times
23 that you did not go with Rick Jessie down to Martinsville to
24 see Dr. Smithers. Who paid for those visits?

25 A. Well, there's only the two others. And it was a friend

1 that took me the last time helped me out, and then my mom and
2 dad helped me out one time.

3 Q. You say helped you out?

4 A. Yeah, financially, yeah.

5 Q. Okay. What was the method of payment to Dr. Smithers's
6 office?

7 A. Cash.

8 Q. And when you say cash, some people sometimes mean credit
9 card. But you mean actually --

10 A. Cash.

11 Q. Bills.

12 And who got the pills when you went with Rick
13 Jessie?

14 A. They were all mine. I didn't have to --

15 Q. And what kind of pills were you getting from
16 Dr. Smithers?

17 A. Oxycodone, 30-milligram. I don't know the name of those
18 ones. I can't remember the name of the others.

19 Q. What about fentanyl?

20 A. Fentanyl -- yeah, I believe I did get it on one visit.

21 Q. Do you remember the last visit you had with Dr. Smithers?

22 A. Yeah.

23 Q. And so you drove over to Martinsville for that one?

24 A. Yeah. I got a motel room.

25 Q. Where did you stay, if you remember?

1 A. I do not remember the name of the hotel. I know I got a
2 call from Dr. Smithers that something had happened and he
3 wasn't going to be in the office, wanted to know if it was
4 okay to meet him somewhere else. He would call me back in a
5 few minutes. He did so. And I met him at Starbucks in
6 Greensboro.

7 Q. What state is Greensboro in?

8 A. South Carolina. It's right over the line.

9 Q. Rush it's not North Carolina?

10 A. Yeah, it might be. North Carolina.

11 Q. So it's your testimony that you were set to see
12 Dr. Smithers in Martinsville; right?

13 A. Mm-hmm, yes.

14 Q. And he calls you and tells you to meet him in Greensboro
15 North Carolina?

16 A. In a Starbucks parking lot.

17 Q. Okay. Did you, in fact, go to meet him in Starbucks
18 parking lot?

19 A. Yes, I did. And that was my last visit there.

20 Q. Okay. Tell us how that went down when you arrived?

21 A. I was sitting in the parking lot. He calls me -- I seen
22 him come into the parking lot in his car --

23 Q. Can I stop you. So you got there first?

24 A. Yes.

25 Q. Okay. How did you know which Starbucks in Greensboro

1 North Carolina to go to?

2 A. Well, he told me which one. So I -- you know, I had GPS
3 and everything. I was sitting there, he entered the parking
4 lot. Called me and told me to wait just a minute. And he
5 circled around the parking lot and went over and parked.

6 Q. And so you see him park. And then what did you do?

7 A. He called and said, you know, everything was fine. I
8 went over to his car, got out. I handed him cash and he
9 handed me a prescription.

10 Q. How much was the cash you handed him?

11 A. \$300, I think. It's whatever the office visit was.

12 Q. And then he gave you a prescription. Was it for
13 oxycodone?

14 A. Mm-hmm.

15 Q. What kind of exam did Dr. Smithers do --

16 THE COURT: Is that yes, ma'am.

17 THE WITNESS: Yes, sorry, I'm sorry.

18 BY MR. JUHAN:

19 Q. What kind of exam did Dr. Smithers do of you in the
20 Starbucks parking lot in Greensboro North Carolina?

21 A. None.

22 Q. Did he go through any forms or questionnaires with you?

23 A. No.

24 Q. Did you keep going to him after that incident?

25 A. No.

1 Q. What did you think about all that?

2 A. It was wrong. Very wrong. Very wrong. That's why I
3 don't -- I don't have any dealings with anything like that
4 anymore. And I've changed. I don't have even take medication
5 anymore.

6 MR. JUHAN: No further questions.

7 Please answer any questions that Mr. Williams might
8 have.

9 THE COURT: Cross-examination?

10 MR. WILLIAMS: Yes.

11 **CROSS-EXAMINATION**

12 BY MR. WILLIAMS:

13 Q. Good afternoon, Miss Mullins, how are you?

14 A. I'm fine.

15 Q. You stated that -- when you first went to visit
16 Dr. Smithers, what were you complaining of, do you recall?

17 A. I -- I've had back trouble for years. I've got
18 fibromyalgia, bulged discs. There's a few different things.

19 Q. Okay. I think on the intake form you stated you had
20 chronic pain?

21 A. Mm-hmm.

22 Q. You said it was widespread; is that pretty accurate?

23 A. Mm-hmm.

24 Q. And I think you stated that you had hot burning pain,
25 shooting pain?

1 A. Mm-hmm.

2 Q. About like that. Where was that located? Just all over,
3 kind of?

4 A. No, it was my back, mostly. Lower back. Mid to lower
5 back. I have a knee -- right in my left knee. I've had
6 problems. I've had injections in. And I've got arthritis
7 from the top of my -- from my neck all the way through my body
8 in every joint.

9 Q. Okay. I think this was on 9-2; does that sound right?
10 The first visit that you had?

11 A. I -- I do not --

12 Q. 9-2 of --

13 A. I don't exactly remember exactly.

14 Q. -- 2015, does that sound about right?

15 A. Sounds about right.

16 Q. Okay. And you stated that your pain increases with
17 bending backward, changes in the weather, climbing stairs,
18 lifting objects?

19 A. Yes.

20 Q. All that was correct?

21 A. Yes.

22 Q. And I think you stated you had an MRI on your upper --
23 lower back in 2013?

24 A. Yeah, I believe I took that, I took that to him.

25 Q. You presented that to him, didn't you?

1 A. Yes.

2 Q. You also had an X-ray of your back and knee in 2013?

3 A. Mm-hmm.

4 Q. And a CT scan of your back in 2011; does that sound
5 right?

6 A. Probably about right.

7 Q. You provided all that to him, didn't you?

8 A. Yeah, I believe so. I must have, yeah.

9 Q. And you had been to a pain clinic in the past?

10 A. Yeah, I've had, actually, injections in my neck and back
11 for a while at Lexington.

12 Q. So you had gone, based upon -- I think you were going,
13 was it Hope Clinic? Is that where you were going? Or where
14 were you going to the pain clinic first?

15 A. Pasadena was the very first one I went to back years ago.

16 Q. The one right before Dr. Smithers, was that -- do you
17 recall which one that was?

18 A. Was it -- I seen that doctor. Pain clinic on Rosebud.
19 Dr. James.

20 Q. Okay.

21 A. Albert James.

22 Q. Did it get closed down?

23 A. No. No, he's still -- he's still.

24 Q. Okay. But because of Rick and Rebecca, you decided to
25 come to Dr. Smithers; is that correct?

1 A. Yes.

2 Q. Okay. And I think you reported that you'd been taking
3 oxycodone before, 30 milligrams?

4 A. Yeah.

5 Q. Did you report that you had taken that before?

6 A. Yes.

7 Q. Okay. And was that what you were on right at the time,
8 or what were you --

9 A. Yeah, I had been on, yeah.

10 Q. Okay. All right. And so also says that you have carpal
11 tunnel surgery in '94?

12 A. Yeah, I've had another one, also two years ago.

13 Q. I think in '94 it was on your right hand?

14 A. Yes.

15 Q. And in 2015 it would have been on your left hand?

16 A. Yes.

17 Q. You had a hysterectomy in 2012 that you reported?

18 A. Yes.

19 Q. And thyroidectomy completed in 2013; correct?

20 A. Yes, I had thyroid cancer.

21 Q. I think Dr. Smithers went over with you about high blood
22 pressure and stuff. Did he talk to you about that?

23 A. Yes.

24 Q. Okay. And talked to you a little bit about your cancer
25 and some other issues and stuff?

1 A. Yes.

2 Q. How long is the initial visit? How long was he in with
3 you, do you recall?

4 A. 10, 15 minutes, maybe.

5 Q. Okay. But y'all went over quite a bit of stuff, didn't
6 you?

7 A. Yes, a few things, yes.

8 Q. He examined you, didn't he?

9 A. Yeah, he felt down my spine.

10 Q. Okay. And you had legitimate injuries, didn't you?

11 A. Yes.

12 Q. Okay. Still have pain today?

13 A. Not as bad. I've gone to other means of dealing with my
14 pain other than taking pain medication. I do not of -- since
15 Dr. Smithers I have not had pain medicine prescribed to me,
16 anything like that.

17 Q. Now, I think you also said that you visited with him, I
18 think on January the 8th; is that correct? And that was in
19 the parking lot; is that right?

20 A. Yes.

21 Q. Okay. And you stated that you didn't have any kind of
22 conversation with him; is that correct?

23 A. No.

24 Q. So if there was a pain inventory sheet that said that you
25 had pain of 9 down to 4, you didn't provide that information?

1 A. I don't believe so.

2 Q. Okay. You don't believe so?

3 A. I don't think I provided any kind of information other
4 than --

5 Q. Possible that he would have talked to you about that
6 while you were there?

7 THE COURT: Yeah, you need to wait until the witness
8 has finished her answer before you start another question.

9 THE WITNESS: I don't believe so, no.

10 BY MR. WILLIAMS:

11 Q. Okay. But you called him stating that -- did you have an
12 appointment that day?

13 A. Yes.

14 Q. Okay. And when you had talked to him and he said he
15 couldn't come in, he stated he had an emergency?

16 A. Yeah, emergency, something going on and he wasn't going
17 to be in the office.

18 Q. Okay. But you had an NJ, in fact, that you needed your
19 medication, didn't you?

20 A. Well, I drove there for the appointment.

21 Q. Okay. So you were asking because you said that the other
22 medicine that you were taking wasn't working; is that correct?

23 A. I'm --

24 Q. Do you recall telling him something that your pain
25 medicine wasn't working -- you had gone to a different pain

1 clinic after 9-2; right?

2 A. Yeah, one time in between, yeah. On the last visit there
3 at Starbucks, I don't recall any conversation about any -- any
4 medicine, of the strengths or anything because there -- it
5 wasn't in the environment situation for him to be carrying on
6 conversation.

7 Q. So it's your testimony that Dr. Smithers called you and
8 told you to come down there, instead of you calling him and
9 asking for him to come out and meet you?

10 A. No, I didn't ask him to meet me anywhere. He -- I said I
11 called in -- I got to the motel room -- I really don't
12 remember how exactly it played out.

13 I either called the office or maybe he called my
14 phone to let me know -- or someone -- there was a couple other
15 patients up there at the same time. And he informed me that
16 something had come up, he wasn't going to be in the office.
17 But if it was okay, he'd meet me somewhere else, but he would
18 call me back. He called me back just a little bit after that
19 and told me where.

20 Q. If you were seeing another doctor, how did you know --
21 did you make an appointment with Dr. Smithers --

22 A. I only seen that other doctor one time and went back to
23 him for that last visit. And I said that's it. I didn't
24 cross no prescriptions, there wasn't -- I wasn't doing no
25 doctor shopping or anything. That other doctor was closer. I

1 seen him one time, and he didn't give me the numbers or the
2 same strength that Dr. Smithers gave me, so I went back for
3 that last visit to Dr. Smithers and that was it.

4 Q. Okay. But you hadn't seen Dr. Smithers in about three or
5 four months prior to that, had you?

6 A. Couple months.

7 Q. At least two or three months, hadn't you?

8 A. I don't remember if it had been that long.

9 Q. Okay.

10 A. I don't think it was.

11 Q. Your last visit on 9-30-2015, does that sound correct?

12 A. That sounds about right.

13 Q. Okay. Then you didn't see Dr. Smithers again until
14 January the 8 of 2016; right? That was in the parking lot?
15 That would have been the one in the parking lot?

16 A. I didn't think there was that long in between the last
17 visit.

18 Q. Okay. You didn't report in your medical records that you
19 were going to a different pain clinic and that you were
20 terminating your --

21 A. Mm-hmm.

22 Q. That you were terminating your relationship with his
23 clinic? That was in 9-30-25th, wasn't it?

24 A. Yeah, sounds close, yeah.

25 Q. And so then all of a sudden your testimony is he just

1 randomly calls you on January the 8th?

2 A. No. No. Not randomly. I had an appointment. I had an
3 appointment. It was not a random call.

4 Q. Okay. So you had scheduled an appointment?

5 A. Yes.

6 Q. Dr. Smithers --

7 A. Thomas Vicraft was another individual that was there that
8 night as well. He wasn't there at the store -- he wasn't with
9 me, but he was another patient up there.

10 Q. You had -- but when you saw Dr. Smithers on September the
11 30th -- or September the eighth, I think was your initial
12 appointment. You had a legitimate pain issue, didn't you?

13 A. Mm-hmm. Yes.

14 Q. So Dr. Smithers diagnosed that and prescribed medicine
15 for you, didn't he?

16 A. Well, I took him a test. I don't know if he diagnosed
17 it, he just, you know, it takes test to diagnose. Tests were
18 done by doctors to diagnose my pain and problems. There was
19 no test run.

20 MR. WILLIAMS: Thank you. Your Honor, may have just
21 a second?

22 MR. WILLIAMS: No further questions, Your Honor.

23 THE COURT: Any further questions?

24 MR. JUHAN: No, Your Honor. Just ask that she be
25 subject to recall.

1 THE COURT: All right. Thank you, ma'am. You may
2 leave now.

3 You may be asked to come back. If so, you have to
4 do that.

5 THE WITNESS: Okay.

6 THE COURT: Thank you, ma'am.

7 THE WITNESS: Thank you.

8 THE COURT: All right. Ladies and gentlemen, we're
9 going to end at this time. It will be necessary for you to
10 return tomorrow so we can begin promptly at 9:00. Please
11 remember my instructions to you and have a good evening.
12 Drive carefully.

13 If you'll follow the bailiff out, we'll see you
14 tomorrow morning.

15 (Proceedings held in the absence of the jury.)

16 THE COURT: All right. Counsel, is there anything
17 we need to take up before we recess for the day?

18 MR. RAMSEYER: Your Honor, the Court indicated it
19 would speak with us about the exhibits.

20 THE COURT: Yeah.

21 Since there are a number of exhibits, I wonder if
22 the Government could keep those, and perhaps in your offices
23 in this building.

24 MR. RAMSEYER: Yes, Your Honor.

25 With -- the electronic versions the clerk has.

1 THE COURT: Right.

2 MR. RAMSEYER: We can keep the paper ones.

3 THE COURT: And in regard to sealing, once we finish
4 the case, we'll discuss anything that needs to be sealed, if
5 they're not going to be placed on the record at this time.

6 Is that understood?

7 MR. RAMSEYER: Yes, Your Honor.

8 THE COURT: So, in other words, they're not going to
9 go on the docket -- correct, Madam Clerk?

10 THE CLERK: That's correct.

11 THE COURT: -- at this time. So we don't need to
12 seal anything. But at the point that we do, we can talk about
13 what needs to be sealed.

14 MR. RAMSEYER: Thank you, Your Honor.

15 THE COURT: Yes, sir. Did you have something,
16 Mr. Williams, that you wanted to bring up?

17 MR. WILLIAMS: No, Your Honor.

18 THE COURT: All right. If there's nothing further,
19 then we'll adjourn court for today.

20 (Proceedings concluded at 4:13 p.m.)

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REPORTER'S CERTIFICATE

I, DONNA J. PRATHER, do hereby certify that the above and foregoing, consisting of the preceding 159 pages, constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 8th day of June, 2019.

S/Donna Prather

DONNA J. PRATHER, RPR, CRR, CBC, CCP
Federal Official Court Reporter

Donna Prather, CCR, RPR, CCP, CCB

Official Court Reporter for the U.S. District Court Western District of Virginia

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